

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1076

RECEIVED
MAY 26 1976
B
P/S

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

ROBERT MUNOZ and JAMES SIMS,

Appellants,

and

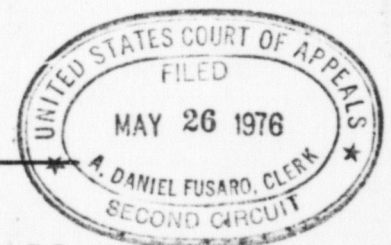
JOHN SIMS, FRANK SIMS, CLEO WILLIAMS, EDDIE
JACKSON and CARLOS CUADRADO,

Defendants.

*Appeal from the United States District Court for the Southern
District of New York.*

APPELLANTS' APPENDIX

MURRAY RICHMAN
Attorney for Appellants
1930 Grand Concourse
Bronx, New York 10457
(212) 878-1360



(9600)

LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N.J.
(201) 257-6850

New York, N.Y.
(212) 563-2121

Philadelphia, Pa.
(215) 563-5587

Washington, D.C.
(201) 783-7288

TABLE OF CONTENTS

| | Page |
|----------------------------------------------------------------------------|------|
| Docket Entries | 1a |
| Extract of Docket Entries | 7a |
| Indictment (Filed December 11, 1974) . . . | 8a |
| Excerpts from Trial Testimony | 31a |
| Memorandum in Support of Rule 29 Motion . | 225a |
| Government's Memorandum of Law | 236a |
| Trial Court's Decision on Rule 29 Motion Dated March 23, 1976 | 248a |

WITNESSES

| | |
|-------------------|------|
| Alicia: | |
| Cross | 31a |
| Migdalia Ortiz: | |
| Cross | 62a |
| Recross | 82a |
| Hochberger: | |
| Direct | 93a |
| Cross | 95a |
| Recross | 100a |
| Cooke: | |
| Direct | 105a |
| Cross | 106a |

ii
Contents

| | Page |
|------------------|------|
| Cannizzaro: | |
| Direct | 110a |
| Cross | 112a |
| Bonnano: | |
| Cross | 116a |
| Amengual: | |
| Direct | 121a |
| Ferrari: | |
| Cross | 131a |
| Tannenbaum: | |
| Cross | 138a |
| Wicks: | |
| Cross | 143a |
| Carter: | |
| Cross | 146a |
| Dickson: | |
| Direct | 151a |
| Cross | 152a |
| Clark: | |
| Cross | 159a |
| Montana: | |
| Direct | 160a |
| Cross | 162a |

iii
Contents

| | Page |
|--------------------|------|
| Vega: | |
| Direct | 166a |
| Redirect | 168a |
| Fernandez: | |
| Direct | 172a |
| Cross | 176a |
| Cuadrado: | |
| Direct | 180a |
| Cross | 186a |
| Redirect | 197a |
| Recross | 198a |
| Dudonis: | |
| Cross | 203a |
| Beatus: | |
| Cross | 207a |
| Feinberg: | |
| Direct | 208a |
| Cross | 217a |

61 URM. 1168

DOCKET ENTRIES

JUDG. MOTLEY

74 CR-1168

1a

TITLE OF CASE

ATTORNEYS

THE U. S. STATES

For U. S.:

vs.

Kenneth R. Feinberg AUSA

791-0037

ROBERT MUNOZ

1-30

JAMES SIMS

1-30

FRANK SIMS

1-9 and 30

JOHN SIMS

1-29

CARLOS CUADRADO

1-29

CLEO WILLIAMS, a/k/a Brother Black

a/k/a Cleo Black 1-29

WARNELL VEGA, a/k/a "Skip" Vega 1-29

EDDIE JACKSON

1-29

FRUTO ALICEA

1-29

For Defendant:

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine,

Clerk, \$53,449,396,59

Marshal,

Attorney,

Commissioner's Court, 18:371 Consp. to unlaw. & wilful. Damage & destroy

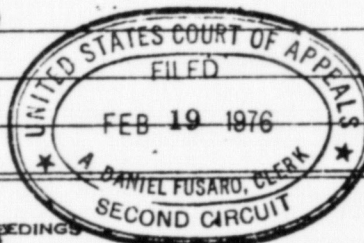
XIV property by means of explosives. (Ct. 1)

18:844(i) Pipebombs- Explosives Law. (Ct. 2-9)

18:1951 Extortion- Hobbs Act) (Cts. 10-2)

18:1503 Obstruction of justice. (Ct. 30)

(Thirty Counts)



DATE

PROCEEDINGS

12-11-74 Filed indictment.

B/W's ordered for Dett's John Sims, Eddie Jackson & Fruto Alicea.

B/W's issued. Metzner, J.

Case assigned to Motley, J. related to 74-cr-1010.

12-20-74 R. MUNOZ - PLEADS NOT GUILTY ..Motions 1-28-75 Bail \$10,000 cash or surety cont'd as
prev. fixed by Mag. Jacobs.

JAMES J. SIMS - PLEADS NOT GUILTY ..Motions 1-8-75 Bail prev. fixed in 74Cr.1010 cash or surety
cont'd.

BEST COPY AVAILABLE

(Cont'd. page 2)

| DATE | PROCEEDINGS | CLERK'S FEES | |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-----------|
| | | PLAINTIFF | DEFENDANT |
| 12-20-74 | F. SIMS - Present (No Atty.) Court directs a not guilty plea be entered. Bail previously fixed in 74Cr.1010...\$10,000 Cash or surety be cont'd. | | |
| | JOHN SIMS - Atty. present..Pleads not guilty..Motion 1-28-75, bail of \$10,000 previously fixed by Mag. Jacobs cont'd. | | |
| | CARLOS CUADRADO - Atty. present..Pleads not guilty..Motions 1-8-75..Bail of \$20,000 P.R.B. fixed by Mag. Jacobs cont'd. | | |
| | CLEO WILLIAMS - Atty. present not present. Court directs a not guilty plea be entered. Motions 1-8-75..Bail previously fixed at \$10,000 P.R.B. by Mag. Jacobs cont'd..... | | |
| | WARNELL VEGA - Atty. present..Pleads not guilty..Motion 1-8-75..Bail prev. fixed \$25,000 P.R.B. Or surety fixed by Mag. cont'd. | | |
| | EDDIE JACKSON - Atty. present..Pleads not guilty..Motion 1-28-75..Bail of \$10,000 cash or surety cont'd. | | |
| | FRUTO ALICEA - Atty. present..Court direct a not guilty plea be entered..Motion 1-8-75..Bail of \$10,000 cash or surety cont'd... MOTLEY, J. | | |
| 1-8-75 | JAMES SIMS - Filed affdvt. & notice of motion for a bill of particulars..Ret. 1-16-75. | | |
| 1-14-75 | WARNELL VEGA - Filed stip. & order that proceedings involving a bill of particulars and discovery are adj'd to Jan. 28-75...Motley, J. | | |
| 1-15-75 | JOHN SIMS, FRUTO ALICEA, EDDIE JACKSON & ROBERT MUNOZ - Filed following papers received from Magistrate..Docket sheet, indictment warrants, disposition sheet, appointment of counsel, notice of appearance, final commitment appearance bonds. | | |
| 1-17-75 | CARLOS CUADRADO - Atty. present...Deft withdraws plea of not guilty..Pleads Guilty to Ct. 1...P.S.I. ordered...Bail reduced to \$1,000 P.R.B. Sent. adj'd to 11: a.m. June 9, 1975.....Motley, J. | | |
| 1-17-75 | Filed Bill of particulars. | | |

(Cont'd on PAGE 3)

3a

PROCEEDINGS

DATE

4-1-75

FRANK SIMS - Filed notice of appearance by Richard G. Rosenbaum 225 B'Way NYC
962-1058

DATE

/JAMES SIMS

| | |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1-20-75 | Filed memo endorsed on motion filed 1-8-75.... The within motion was heard on 1-20-75***The Govt. agreed to furnish certain additional information as set forth in the record***MOTLEY, J..... m/n |
| 1-28-75 | F.ALICEA -Deft & atty.present...Withdraws plea of not guilty and Pleads Guilty to Ct.1 only...P.S.I. ordered Sent. adj'd to 6-9-75 11a.m. rm.1305. Bail cont'd. as previously fixed by Mag.... ..Motley,J. |
| 1-30-75 | W.VEGA - Filed stip. & order adjurning pre-trial motions until 2-18-75..Motley,J. |
| 2-5-75 | JOHN SIMS - Filed motion for an order to inspect G.J.minutes,to dismiss the indictme to suppress evidence, for bill of particulars, discovery & inspection etc... Ret.2-28-75--- |
| 2-10-75 | Filed bill of particulars and response to motions for discovery and to dismiss.. |
| 3-11-75 | Filed notice of readiness for trial |
| 4-21-75 | FRANK SIMS - Filed affdvt. & notice of motion for a bill of particulars |
| 4-21-75 | XJAMES SIMS - Filed affdvt. & notice of motion for an Order severing count 30 of the indictment |
| 4-21-75 | FRANK SIMS - Filed memorandum in support of bill of particulars. |
| 5-7-75 | JOHN SIMS - Filed memo endorsed on motion filed 2-5-75...The within motion and similar motions by co-defts****are denied as indicated....Motley, J.... (Mailed notice) |
| 5-16-75 | ALL DEFTS - Filed order.Trial of this action will commence on Oct.6-75 at 10 a.m. No adjournments will be granted,except upon written application requested no later than May 30-75.....Motley, J. m/n |
| 9-19-75 | ROBERT MUNOZ - Filed affdvt.of R.L.Garnett,AUSA in support of a writ..ret.9-24-75.. |
| 9-25-75 | R.MUNOZ- Filed affdvt.of R.L.Garnett,AUSA in support of a writ..Ret.10-9-75 |
| 9-29-75 | R.MUNOZ - Filed affdvt.of R.L.Garnett,AUSA in support of a writ...Ret.10-9-75 |
| 10-3-75 | E.FERNANDEZ - Filed writ of H/C with marshal's return... |
| 10-6-75 | Defts. R.Munoz - James Sims, - John Sims - Frank Sims - Cleo Williams - Eddie Jacks JURY TRIAL BEGUN before Motley, J. |
| 10-7-75 | Trial: Cont'd. |
| 10-8-75 | Trial Cont'd. |
| 10-9-75 | Trial Cont'd. |
| 10-10-75 | Trial Cont'd. |
| 10-14-75 | Trial Cont'd. |
| 10-15-75 | Trial Cont'd. |

-See Over -

| DATE | PROCEEDINGS |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10-16-75 | Trial Cont'd. |
| 10-20-75 | Trial Cont'd. |
| 10-21-75 | Trial Cont'd. |
| 10-22-75 | Trial Cont'd. |
| 10-23-75 | Trial Cont'd. |
| 10-27-75 | Trial Cont'd. |
| 10-28-75 | Trial Cont'd. |
| 10-29-75 | Trial Cont'd. |
| 10-30-75 | Trial Cont'd. |
| 10-31-75 | Trial Cont'd. |
| 11-3-75 | Trial Cont'd. |
| 11-4-75 | Trial Cont'd. |
| 11-5-75 | Trial Cont'd. |
| 11-6-75 | Trial Cont'd. |
| 11-10-75 | Trial Cont'd. |
| 11-11-75 | Trial Cont'd. |
| 11-12-75 | Trial Cont'd. |
| 11-13-75 | Trial Cont'd. |
| 11-17-75 | Trial Cont'd. - Govt's oral application to Dismiss Counts as to the following Defts GRANTED John Sims Cts. 1, 2 & 4 thru 29 incl.... Eddie Jackson cts. 3 thru 29 incl. R. Munoz James Sims Cleo William Cts. 10, 11, 15, 21 & 26 only... Motley, J., |
| 1-20-75 | Filed transcript of record of proceedings, dated Jan. 17, 1975 |
| 1-18-75 | Trial cont'd. |
| 1-19-75 | Trial cont'd. |
| 1-20-75 | Trial cont'd. |
| 1-21-75 | Trial cont'd. |
| 1-25-75 | Trial cont'd. |
| 2-1-75 | Trial cont'd. |
| 2-2-75 | Trial cont'd. |

6a

PROCEEDINGS

| DATE | |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12-3-75 | FRUTO ALICEA - Filed transcript of record of proceedings, dated 1-28-75 |
| 12-3-75 | Trial Cont'd. |
| 12-4-75 | Trial Cont'd. Jury deliberations begun. |
| 12-5-75 | Trial cont'd. Jury returns with a verdict of GUILTY as to defts MUNOZ & JAMES SIMS on ct.1 only NOT GUILTY cts.2 thru 25 NOT GUILTY as to DEFTS JOHN SIMS - FRANK SIMS, EDDIE JACKSON & CLEO WILLIAMS.....P.S.I. ordered as to defts MUNOZ & JAMES SIMS...Sent. adjd to 1-30-76 2 p.m. Bail cont'd as previously fixed trial conclude MOTLEY, J..... |
| 12-19-75 | Filed Transcript of record of proceedings, Dated: Oct. 6, 7, 8, 9, 14, 15, 19 |
| 12-19-75 | Filed Transcript of record of proceedings, Dated Oct. 16, 20, 21, 22, 23, 19 |
| 12-19-75 | Filed Transcript of record of proceedings, Dated Oct. 27, 28, 29, 30, 31, 19 |
| 12-19-75 | Filed Transcript of record of proceedings, Dated Nov. 3, 4, 5, 6, 12, 1975 |
| 12-19-75 | Filed Transcript of record of proceedings, Dated Nov. 13, 17, 18, 19, 1975 |
| 12-19-75 | Filed Transcript of record of proceedings, Dated Nov. 22, 24, 25, 26, 1975 Dec. 1, 2, 1975. |
| 12-19-75 | Filed Transcript of record of proceedings, Dated Dec. 3, 4, 5, 1975 |
| 1-9-76 | ROBERT MUNOZ Filed memo endorsed on application for extension of time ****The within motion is granted..The U.S. has until 2-3-76 to reply....So ordered...Motley, J. m/n |
| 1-12-76 | CARLOS CUADRADO - Filed memorandum opinion #43698 on Jan. 7-76 atty. for deft moved this judge to disqualify herself from imposing sentence. At present sentencing is scheduled for Jan. 23, 1976****Since the only allegation of prejudice made by defts atty. concerned this court's evaluation of and comment**The motion is xxxxxx accordingly denied...So Ordered...Motley, J...m/n |
| 1-19-76 | R. MUNOZ) XENK JAMES SIMS) Filed memorandum in support of motion for judgment of acquittal... |
| 1-23-76 | CARLOS CUADRADO - Filed Judgment (Atty. Manuel N. Zapata, present) The deft is committed for imprisonment for a period of FIVE YEARS, on motion of deft's counsel, Counts 2 thru 29 inclusive are dismissed no opposition by the Govt...., Motley, J.... Ent. 1-26-76----- |
| 1-23-76 | FRUTO ALICEA - Filed Judgment (Atty. Robert Mitchell, present) The deft is sentenced to FIVE YEARS. Execution of sentence is suspended...Dft is placed on probation for a period of FIVE YEARS, subject to the standing order of this Court....On motion of deft's counsel, Counts 2 thru 29 inclusive are dismissed, no opposition by the Govt....., Motley, J.....Ent. 1-26-76----- |
| 1-27-76 | CARLOS CUADRADO - Filed notice of appeal from Judgment dated 1-23-76., Copy given to U.S. Atty. and mailed to deft at Metro Correctional Center NYC.... |
| 2-19-76 | Filed stipulation re: inclusion of related document (Filed in 74 cr. 1010) to be transmitted to the U.S.C.A. along with this record. |

A TRUE COPY

RAYMOND E. BURGHARDT, Clerk

Deputy Clerk

EXTRACT OF DOCKET ENTRIES

7a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. 76-1076

U.S.A.

-v-

ROBERT MUNOZ, et al.

CASE NO. 74 cr. 1168

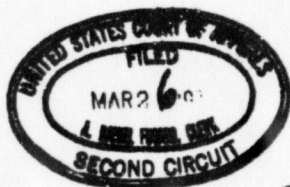
JUDGE MOTLEY

EXTRACT OF DOCKET ENTRIES

DATE

PROCEEDINGS

DEC. 19-75 Transcript of record of proceedings dtd: Nov. 3,4,5,6,12-75.
DEC. 27-75 Transcript of record of proceedings dtd: Nov. 10-75.
JAN. 27-76 Transcript of record of proceedings dtd: Nov. 11-75.
DEC. 19-75 Transcript of record of proceedings dtd: Nov. 13,17,18,19-75.
DEC. 19-75 Transcript of record of proceedings dtd: Nov. 22-24-75; Dec. 1&2-75.
DEC. 19-75 Transcript of record of proceedings dtd: Dec. 3-5-75.
MAR. 9-76. JAMES SIMS & ROBERT MUNOZ- Notice of Appeal.



A TRUE COPY
RAYMOND E. BURCHARD, Clerk
By M. J. [Signature]
Deputy Clerk

76-1076
[Signature]

INDICTMENT (Filed December 11, 1974)

8a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

- v - :

ROBERT MUNOZ, JAMES SIMS, FRANK
SIMS, JOHN SIMS, CARLOS CUADRADO,
CLEO WILLIAMS, a/k/a Brother
Black, a/k/a Cleo Black, VARNISH
VEGA, a/k/a "Skip" Vega, MINOR
JACKSON and FRUTO ALICIA,

Defendants. :

S 74 Cr. (Crim)

INTRODUCTION

The Grand Jury charges:

1. At all times relevant herein, the Black and Puerto Rican Coalition of Construction Workers ("Coalition") was an organization with main offices at 340 East 149th Street, Bronx, New York. The Coalition was established in or about 1972 with a view toward promoting and encouraging greater minority participation by both skilled and unskilled laborers in the construction industry in New York City. The Coalition would attempt to encourage various contractors and subcontractors at particular construction sites in New York City and elsewhere to employ more Black and Puerto Rican construction workers.

2. At all relevant times herein, the defendant ROBERT MUNOZ was Executive Director of the Hunts Point Community Corporation, a federally funded anti-poverty organization, and was the chief spokesman of the Coalition.

3. At all relevant times herein, the defendant JAMES SIMS was a member of the Coalition, serving as its director and one of its chief spokesman; in addition, he was a part-owner of the CBS Guard Service, located at 340 East 149th Street, Bronx, New York.

4. At all relevant times herein, the defendant FRANK SIMS was a member of the Coalition and one of its chief spokesmen;

MICROFILM

DEC 11 1974

REF:ale
n-315

5. At all relevant times herein, the defendant JOHN SIMS was a member of the Coalition.

6. At all relevant times herein, the defendant CARLOS CUADRADO was a member of the Coalition, and one of its chief spokesmen; in addition, he was an employee of the CIB Guard Service.

7. From November 1972, up to and including August 23, 1973, the defendant CLEO WILLIAMS, a/k/a Brother Black, a/k/a Cleo Black was a member of the Coalition and one of its chief spokesmen.

8. At all relevant times herein, the defendant WARNELL VEGA, a/k/a "Skip" Vega was a member of the Coalition; in addition, he was an employee of the Community Guard Service, located at 1032 Prospect Avenue, Bronx, New York.

9. At all relevant times herein, the defendant EDDIE JACKSON was a member of the Coalition.

10. At all relevant times herein, the defendant FRUTO ALICEA was a member of the Coalition.

COUNT ONE

The Grand Jury further charges:

1. From in or about November, 1972 up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, ROBERT MUNOZ, JAMES SIMS, FRANK SIMS, JOHN SIMS, CARLOS CUADRADO, CLEO WILLIAMS, a/k/a Brother Black, a/k/a Cleo Black and WARNELL VEGA, a/k/a "Skip" Vega, EDDIE JACKSON and FRUTO ALICEA the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, violations of Title 18, United States Code, Sections 844(1) and 1961.

OBJECTS OF THE CONSPIRACY

2. It was part of said conspiracy that said defendants and co-conspirators unlawfully, wilfully and knowingly

would maliciously damage and destroy, or attempt to damage and destroy, by means of explosives, to wit, pipebombs, certain buildings, vehicles and other real and personal property located on various construction sites in the Southern District of New York and elsewhere which were used in interstate and foreign commerce and in activities affecting interstate and foreign commerce.

3. It was further a part of said conspiracy that said defendants and co-conspirators unlawfully, wilfully and knowingly would obstruct, delay and affect commerce and the movement of any article or commodity in commerce, by extortion and would attempt and conspire so to do, and would commit and threaten physical violence to persons and property in furtherance of their plan to extort money for personal gain from various contractors at various construction sites in the Southern District of New York and elsewhere and in furtherance of other unlawful plans and purposes.

MEANS OF THE CONSPIRACY

4. Among the means by which the defendants and the co-conspirators would and did carry out the conspiracy were the following:

(a) Beginning in or about November, 1972, members of the Coalition, led by the defendants and others, and numbering anywhere from five members to three hundred members began to demonstrate at various construction sites in the New York City area in an effort to increase the number of Black and Puerto Rican construction workers employed at such sites.

(b) Beginning in or about November 1972, the defendants JAMES SIMS, FRANK SIMS, CARLOS CUADRADO and CLEO WILLIAMS, under the guise of promoting and encouraging greater minority participation in the construction industry, would reap personal financial reward by threatening individual contractors with labor stoppages and property damage if said defendants were not hired as "community coordinators" at the various sites.

(c) The defendants ROBERT MUNOZ, JAMES SIMS, FRANK SIMS, CARLOS CUADRADO and CLEO WILLIAMS, would lead members of the Coalition in demonstrations at various construction sites demanding more jobs for Black and Puerto Rican workers, even if the contractor at the site had a significant representation of Black and Puerto Rican workers already employed. Thereafter, the defendants ROBERT MUNOZ, JAMES SIMS, FRANK SIMS, CARLOS CUADRADO and CLEO WILLIAMS, would meet with the various contractors and request payments ranging from \$150 to \$300 per week, promising in return that all labor problems at the various sites would cease.

(d) Thereafter, the defendants JAMES SIMS, FRANK SIMS, CARLOS CUADRADO and CLEO WILLIAMS, would and did receive payments ranging from \$150 to \$300 per week as "community coordinators."

(e) Beginning in November 1972, the defendants JAMES SIMS, CARLOS CUADRADO and WANNELL VEGA stated to various contractors that in order to insure the absence of damage and theft of construction materials and property at the various construction sites, certain guard services, to wit, Community Guard Service and CBS Guard Service, owned and operated by these three defendants and others, should be hired. Thereafter, these Guard Services were, in fact, hired.

(f) On or about March 28, 1973, JAMES SIMS, JOHN SIMS and PRUTO ALICEA placed an explosive, to wit, a pipebomb at a construction site located at East 149th Street and Morris Avenue in the Bronx, New York in order to cause disruption at that site.

(g) From on or about January 8, 1973, up to and including August 13, 1973, JAMES SIMS, FRANK SIMS, JOHN SIMS, EDDIE JACKSON and PRUTO ALICEA placed similar pipebombs in eight other construction sites and contractor offices, located throughout the greater New York City area.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about January 8, 1973, the defendants JAMES SIMS, EDDIE JACKSON and FRUTO ALICEA met at 147th Street and St. Ann's Avenue in the Bronx where JAMES SIMS took a pipebomb from an automobile and gave it to EDDIE JACKSON.

2. On or about March 27, 1973, the defendants ROBERT MUNOZ, JAMES SIMS and FRUTO ALICEA met in the vicinity of Southern Boulevard, Bronx, New York at which time ROBERT MUNOZ delivered a pipebomb to JAMES SIMS and told him to place the pipebomb at a construction site in the vicinity of East 149th Street and Morris Avenue, Bronx, New York.

3. On or about March 20, 1973, the defendants FRANK SIMS and FRUTO ALICEA threw a firebomb in the vicinity of the Slattery Construction Company, 54th Road, Queens, New York.

4. On or about March 28, 1973, the defendants ROBERT MUNOZ, JAMES SIMS and FRUTO ALICEA met in the vicinity of Southern Boulevard, Bronx, New York, at which time JAMES SIMS delivered between two and three hundred dollars to FRUTO ALICEA.

5. On or about April 12, 1973, the defendants JAMES SIMS, FRANK SIMS and FRUTO ALICEA met in the vicinity of East 167th Street and Union Avenue in the Bronx, at which time JAMES SIMS stated that the construction site at that location "had to be hit" with a pipebomb or an arson.

6. On or about April 28, 1973, the defendant JAMES SIMS met with the defendant CARLOS CUADRADO in the Bronx, New York and told him that he had placed a pipebomb at the construction site at East 149th Street and Morris Avenue, Bronx, New York.

7. On or about May 8, 1973, the defendants JAMES SIMS and CARLOS CUADRADO received approximately \$1000 in the vicinity of East 136th Street and Third Avenue as payment for the placing of a pipebomb at a construction site in the vicinity of East 101st Street and FDR Drive, Manhattan.

8. On or about June 30, 1973, the defendants JAMES SIMS and FRUTO ALICEA placed a pipebomb at the site of Sovereign Construction Company, Paramus, New Jersey.

9. On or about July 16, 1973, the defendants ROBERT MUNOZ, JAMES SIMS and FRUTO ALICEA had a conversation in which they discussed the placing of a pipebomb at a construction site at East 123rd Street and Third Avenue in Manhattan.

10. On or about September 15, 1973, the defendants JAMES SIMS and FRANK SIMS received \$700 in the Bronx, New York, as payment for arson committed at a construction site in the vicinity of East 179th Street and Prospect Avenue, Bronx, New York.

11. On or about May 9, 1973, the defendants JAMES SIMS and CARLOS CUADRADO had a conversation with a contractor in the Bronx, New York at which time JAMES SIMS mentioned that his guard service would be able to protect the contractor from pipebombs.

12. On or about August 9, 1973, the defendants JAMES SIMS, FRANK SIMS and FRUTO ALICEA placed a pipebomb in the vicinity of Pennsylvania Avenue and Livonia Avenue, Brooklyn, New York.

13. On or about August 9, 1973, the defendant JAMES SIMS gave between two and three hundred dollars to the defendant FRUTO ALICEA as payment for ALICEA helping JAMES SIMS place a pipebomb at East 123rd Street and Third Avenue in Manhattan.

14. On or about September 18, 1973, the defendant JAMES SIMS had a conversation with a contractor in the vicinity of 100th Street and Fifth Avenue, Manhattan, at which time JAMES SIMS stated that it would be beneficial for the contractor to hire his guard service in order to protect glass windows at the site from being damaged.

15. In or about November 1972, the defendants CLEO WILLIAMS and WAPNELL VEGA had a conversation with a contractor in the vicinity of Tinton Avenue and Home Street in the Bronx, New York, at which time they advised him that his construction site would be safer if the contractor hired the Community Guard Service.

16. On or about March 20, 1973, the defendant JAMES SIMS met a contractor in the Bronx, New York at which time JAMES SIMS said that if he were hired as a community coordinator there would be no more trouble at the construction site.

17. On or about November 8, 1973, the defendant JAMES SIMS had a conversation with a contractor in the vicinity of East 101st Street and EDR Drive, Manhattan, at which time JAMES SIMS stated that a community coordinator should be hired to avoid further disturbances and that the contractor should not call the police.

18. On or about April 14, 1973, the defendants JAMES SIMS, CARLOS CUADRADO, CLEO WILLIAMS and WAPNELL VEGA met with a contractor in the vicinity of East 167th Street and Union Avenue in the Bronx, New York, at which time JAMES SIMS demanded that a community coordinator be hired in order to avoid trouble.

19. On or about June 29, 1973, the defendant JAMES SIMS met with a contractor in the Bronx, New York and asked the contractor if the contractor wanted to go with him "on a hit", to wit, the placing of a pipebomb at Sovereign Construction Company, Paramus, New Jersey.

(Title 18, United States Code, Section 371).

COUNTS TWO THROUGH NINE

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Two through Nine of this indictment, in the Southern District of New York ROBERT MUÑOZ, JAMES SIMS, FRANK SIMS, JOHN SIMS, CARLOS CUADRADO, CLEO WILLIAMS, a/k/a Brother Black, a/k/a Cleo Black, WAPNELL VEGA, a/k/a "Skip" Vega,

RRF:slc
n-416

15a

EDDIE JACKSON and PRUTO ALICEA the defendants, unlawfully, wilfully, knowingly and maliciously did damage and destroy, and did attempt to damage and destroy by means of explosives, to wit, pipebombs, certain buildings, vehicles and other real and personal property used in interstate and foreign commerce and in activities affecting interstate and foreign commerce, located as hereinafter set forth in Counts Two through Nine:

| <u>COUNT</u> | <u>DATE</u> | <u>LOCATION</u> |
|--------------|-----------------|-------------------------------------------------------|
| 2 | January 8, 1973 | 147th Street and St. Ann's Avenue, Bronx, New York |
| 3 | March 28, 1973 | East 149th Street and Morris Avenue Bronx, New York |
| 4 | May 10, 1973 | East 101st Street and FDR Drive Manhattan |
| 5 | May 10, 1973 | East 149th Street and Park Avenue Bronx, New York |
| 6 | June 29, 1973 | East 101st Street and FDR Drive Manhattan |
| 7 | July 16, 1973 | East 123rd Street and Third Avenue Manhattan |
| 8 | August 9, 1973 | East 123rd Street and Third Avenue Manhattan |
| 9 | August 10, 1973 | East 189th Street and Crotona Avenue Bronx, New York. |

(Title 18, United States Code, Sections 844(1) and 2.)

COUNTS TEN THROUGH TWENTY-NINE

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Ten through Twenty Nine of this Indictment, in the Southern District of New York, ROBERT MUNOZ, JAMES SIMS, JOHN SIMS, CARLOS CUADRADO, CLEO WILLIAMS, a/k/a Brother Black, a/k/a Cleo Black, WARNELL VEGA, a/k/a "Skip" Vega, EDDIE JACKSON and PRUTO ALICEA the defendants, unlawfully, wilfully and knowingly did obstruct, delay and affect commerce and the movement of any article or commodity in commerce by extortion and did attempt and conspire

so to do, and did commit and threaten physical violence to persons and property in furtherance of their plan to extort money for personal gain from various contractors at various construction sites in the Southern District of New York and in furtherance of other unlawful plans and purposes, as hereinafter set forth in Counts Ten through Twenty-Nine:

| <u>COUNT</u> | <u>DATE</u> | <u>LOCATION</u> | <u>TYPE OF PROSCRIBED ACTIVITY</u> |
|--------------|-----------------|--------------------------------------------------------|--------------------------------------------|
| 10 | November, 1972 | Tinton Avenue and Home Street Bronx, New York | Extortion and threats of physical violence |
| 11 | January 8, 1973 | 147th Street and St. Ann's Avenue Bronx, New York | Unexploded Pipebomb |
| 12 | March 28, 1973 | East 149th Street and Morris Avenue Bronx, New York | Exploded Pipebomb |
| 13 | April 13, 1973 | East 167th Street and Union Avenue Bronx, New York | Arson |
| 14 | April 14, 1973 | East 167th Street and Union Avenue Bronx, New York | Extortion and threats of physical violence |
| 15 | May 9, 1973 | Bronx, New York | Extortion and threats of physical violence |
| 16 | May 10, 1973 | East 101st Street and FDR Drive Manhattan | Unexploded Pipebomb |
| 17 | May 10, 1973 | East 149th Street and Park Avenue Bronx, New York | Unexploded Pipebomb |
| 18 | May 29, 1973 | East 101st Street and FDR Drive Manhattan | Arson |
| 19 | June 29, 1973 | East 101st Street and FDR Drive Manhattan | Unexploded Pipebomb |
| 20 | June 29, 1973 | East 101st Street and FDR Drive Manhattan | Arson |
| 21 | July 11, 1973 | Bronx, New York | Extortion and threats of physical violence |
| 22 | July 16, 1973 | East 123rd Street and Third Avenue Manhattan | Exploded Pipebomb |
| 23 | August 9, 1973 | East 123rd Street and Third Avenue Manhattan | Unexploded Pipebomb |

JAN 23 1978
Continued from page 10
On October 29, 1977, I was
informed by Mr. [Name] [unclear]

JAN 23 1978 DEPT. of Agriculture, Bureau of Animal
Sentenced to 5 yrs. ~~Life~~ DEPT. PLACED ON
PROBATION FOR 5 yrs. ~~on parole~~ ~~on parole~~ ON MOTION
OF DEPT. OF AGRICULTURE, DEPT. OF THE GOVERNMENT.

RM

18a

| COUNT | DATE | LOCATION | TYPE OF PROSCRIBED ACTIVITY |
|-------|--------------------|----------------------------------------------------------|--------------------------------------------|
| 24 | August 10, 1973 | East 189th Street and Crotona Avenue Bronx, New York | Unexploded Pipebomb |
| 25 | September 13, 1973 | 227th Street and Notherlands Avenue Bronx, New York | Arson |
| 26 | September 15, 1973 | East 179th Street and Prospect Avenue Bronx, New York | Arson |
| 27 | September 18, 1973 | East 100th Street and Fifth Avenue Manhattan | Extortion and threats of physical violence |
| 28 | September 19, 1973 | East 149th Street and Park Avenue Bronx, New York | Arson |
| 29 | November 8, 1973 | East 101st Street and FDR Drive Manhattan | Extortion and threats of physical violence |

(Title 18, United States Code, Sections 1951(a) and 2.)

COUNT THIRTY

The Grand Jury further charges:

From on or about the 29th day of October, 1974, up to and including the date of the filing of this Indictment, in the Southern District of New York, ROBERT MUNOZ, JAMES SIMS and FRANK SIMS, the defendants, unlawfully, wilfully, knowingly and corruptly did endeavor to influence, obstruct and impede the due administration of justice, by corruptly endeavoring to influence, intimidate and impede a prospective government witness in a legal proceeding, entitled United States v. James Sims, et al., 74 Cr. 1010, which was then pending in the United States District Court for the Southern District of New York, and by corruptly endeavoring to influence, intimidate and impede a witness who was to be and, in fact, would be a witness before a United States Grand Jury sitting within the Southern District of New York, in connection with testimony said witness was to give and, in fact, would give before said Grand Jury in its investigation and inquiry into possible violations by ROBERT

NOV 10 1975 TRIAL CONTINUED
NOV 11 1975 TRIAL CONTINUED

19a

NOV 12 1975 TRIAL CONTINUED

NOV 13 1975 TRIAL CONTINUED

NOV 17 1975 TRIAL CONTINUED = GOVT'S ORAL APPLICATION
TO DISMISS COUNT AS TO THE FOLLOWING DEFTS.
GRANTED.

JOHN GARY = COUNT 1, 2, 4 THRU 29 INCLUSIVE

EDDIE JACKSON = COUNTS 3 THRU 29 INCLUSIVE

ROBERT MURPHY

JAMES EARL RAY = COUNTS 10, 11, 12, 21, 22, 23, 24, 25, 26, 27, 28, 29 ONLY.
C/O WILKINSON

Nothing!
RU

d

NOV 18 1975 TRIAL CONTINUED

NOV 19 1975 TRIAL CONTINUED

NOV 20 1975 TRIAL CONTINUED

NOV 24 1975 TRIAL CONTINUED

NOV 25 1975 TRIAL CONTINUED

DEC 1- 1975 TRIAL CONTINUED

DEC 2- 1975 TRIAL CONTINUED

(RU)

DEC 3- 1975 TRIAL CONTINUED

DEC 4- 1975 TRIAL CONTINUED - JURY DELIBERATIONS BEGUN

DEC 5- 1975 TRIAL CONTINUED - JURY RETURNS WITH A

VERDICT OF GUILTY AS TO DEFTS ANDREW & JAMES EARL

RAY ON COUNT 1 ONLY. NOT GUILTY AS TO DEFTS, JOHN GARY

FRANK GARY, EDDIE JACKSON & ROBERT MURPHY. P.C.E.

ORDERED AS TO DEFTS RAY & JAMES EARL RAY. SENT ADTD.

TO 1-30-76, 2nd, RAIL CARDS AS PROCEEDING FORTH.

TRIAL CONCLUDED.

Nothing!
(2)

MUNOZ and others of Title 18, United States Code, Sections
371, 844(1) and 1951.

20a

(Title 18, United States Code, Sections 1503 and
2.)

Albert Simon
Foreman

Paul J. Corran
PAUL J. CORRAN
United States Attorney

A TRUE COPY
RAYMOND E. BURGHAFF, Clerk

M. G. H.
Deputy Clerk

JAN 17 1975 DEFENDANT CARLOS CONTRATO, (Nelson 2087A)
 Withdraws Plea of Not Guilty. Pleads guilty to
 2nd CT P.S.I. Ordered. Bail reduced to \$1,000.
 Sentenced Adj'd to 11 AM June 7, 1975.

Motley, J.

(RW)

JAN 28 1975 DEFT (ADY. ROBERT MITCHELL PARD) ALICEA
 WITHDRAWS PLEA OF NOT GUILTY AND NOW PLEADS GUILTY
 TO CT 1 ONLY. P.S.I. ORDERED. SENT ADJ'D TO 6-9-75
 11 AM RM 1306. BAIL CONT'D AS PREVIOUSLY FIXED BY
 MAG.

MOTLEY, J.

(RW)

OCT 8 - 1975 DEFTS. MUNOZ, JAMES SIMS, JOHN SIMS, FRANK LUIS
 CREO WILLIAMS, EDDIE JACKSON IN JURY TRIAL BEGAN
 BEFORE MOTLEY, J.

OCT 7 - 1975 TRIAL CONTINUED
 OCT 8 - 1975 TRIAL CONTINUED
 OCT 9 - 1975 TRIAL CONTINUED
 OCT 10 1975 TRIAL CONTINUED
 OCT 14 1975 TRIAL CONTINUED
 OCT 15 1975 TRIAL CONTINUED
 OCT 16 1975 TRIAL CONTINUED
 OCT 20 1975 TRIAL CONTINUED
 OCT 21 1975 TRIAL CONTINUED
 OCT 22 1975 TRIAL CONTINUED
 OCT 23 1975 TRIAL CONTINUED
 OCT 27 1975 TRIAL CONTINUED
 OCT 28 1975 TRIAL CONTINUED
 OCT 29 1975 TRIAL CONTINUED
 OCT 30 1975 TRIAL CONTINUED
 OCT 31 1975 TRIAL CONTINUED (NON-JURY)
 NOV 3 - 1975 TRIAL CONTINUED
 NOV 4 - 1975 TRIAL CONTINUED
 NOV 5 - 1975 TRIAL CONTINUED
 NOV 6 - 1975 TRIAL CONTINUED

CONT'D.

Motions due JAN. 8, 1975. Bail
JAN. 28, 1975. Bail of 10,000 previously fixed
By Maj. Jacobs CONTINUED.

Los CONDRADO - NELSON ZAVATA, of Counsel. Pleads Not Guilty
Motions due JAN. 8, 1975. Bail
of 20,000 P.R.D. Previously fixed by Maj.
Jacobs CONTINUED.

Williams - Roland YRAY, of Counsel Not Present
Court directs a Not Guilty Plea be
entered. Motions due JAN. 8, 1975.
Bail previously fixed (10,000 P.R.D.) By
Maj. Jacobs CONTINUED

Arnold Vega - Elise Perl, of Counsel. Pleads Not Guilty
Motions due JAN. 8, 1975. Bail previously
fixed of 25,000 P.R.D. Previously By Maj.
Jacobs CONTINUED.

Mc JACOBSON - David Greenfield, of Counsel. Pleads Not
Guilty. Motions due JAN. 28, 1975. Bail
of 13,000 CASH or surety CONTINUED.

Allicea - Robert Mitchell, of Counsel. Court directs
a Not Guilty plea be entered. Motions due
JAN. 8, 1975. Bail of 10,000 CASH or surety
CONTINUED (Maj. Jacobs)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ROBERT MUNOZ, JAMES SIMS,
FRANK SIMS, JOHN SIMS, et al.,

Defendants.

INDICTMENT

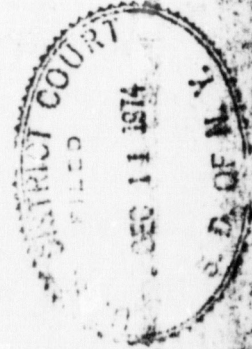
18 U.S.C. §§§371, 844(1), 1951
and 1503.

PAUL J. CURRAN

United States Attorney.

A TRUE BILL

Foreman.



DEC 11 1974

*Plt's motion for adjt
John Sims, Goldie Jackson,
and Paula Alicea*

DEC 20 1974

*Robert Munoz - Merry Richmond, Jr.
Pleads Not Guilty. Motions Dec.
Jan. 28, 1975. Bail, Bail of \$10,000
Previously fixed
Cash or surety continued by N.Y. Sup.*

JAMES

*FRANK SIMS - Neil Sherman, of Counsel, Pleads
Not guilty. Motions due Jan. 3,
Bail previously fixed in indictment
74 CR 1010 (\$10,000 CASH or surety
CONTINUED*

12-20-74

RICHARD ROSENBAUM

230

*FRANK SIMS - Present (No Attorney - 1 Court)
directs A Not Guilty Plea to be
entered. Bail previously fixed in
indictment 74 CR 1010 (\$10,000 CASH
or surety CONTINUED*

31

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---------------------------|---|---------------------|
| UNITED STATES OF AMERICA, |) | No. 74 Crim. 1168 |
| Plaintiff, |) | |
| |) | PETITION TO ENTER |
| v. |) | PLEA OF GUILTY |
| |) | (Fed. R. Cr. Proc., |
| CARLOS CUADRADO, |) | Rules 10 and 11) |
| Defendant. |) | |

The defendant above named respectfully represents to the Court as follows:

(1) My full true name is: CARLOS CUADRADO

and I request that all proceedings against me be had in the name which I here declare to be my true name.

(2) I am represented by counsel and the name of my attorney is: MANUEL NELSON ZAPATA

(3) I have received a copy of the indictment (information) before being called upon to plead, and have read and discussed it with my attorney, and believe and feel that I understand every accusation made against me in this case.

(4) I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the indictment (information), and believe and feel that my attorney is fully informed as to all such matters. My attorney has since informed me, and has counseled and advised with me, as to the nature and cause of every accusation against me, and as to any possible defenses I might have in this case.

(5) My attorney has advised me that the punishment which the law provides, is as follows: A maximum of 5 years imprisonment (and a minimum of 0 years imprisonment) and a fine of \$10,000 for the offense charged in (Count I of the indictment (information);

also that probation may or may not be granted; and that if I plead "GUILTY" to more than one offense, the court may order the sentence to be served consecutively, one after another.

(6) I understand that I may, if I so choose, plead "Not Guilty" to any offense charged against me, and that if I choose to plead "Not Guilty" the Constitution guarantees me: (a) the right to a speedy and public trial by jury; (b) the right to see and hear all witnesses against me; (c) the right to use the power and process of the court to compel the production of any evidence, including the attendance of any witnesses, in my favor; and (d) the right to have the assistance of counsel in my defense at all stages of the proceedings.

(7) I also understand that if I plead "GUILTY" the court may impose the same punishment as if I had pleaded "Not Guilty", stood trial and been convicted by a jury.

(8) I declare that no officer or agent of any branch of government (Federal, State or local), nor any other person has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I would receive a lighter sentence, or probation, or any other form of leniency, if I would plead "GUILTY". I hope to receive probation, but am prepared to accept any punishment permitted by law which the court may see fit to impose. ~~Now I respectfully request that the court consider in mitigation of punishment at the time of sentence the fact that by voluntarily pleading "GUILTY" I have saved the Government and the court the expense and inconvenience of a trial.~~ (Fed. R. Crim. Proc., Rule 32(a)).

(9) I believe and feel that my attorney has done all that anyone could do to counsel and assist me, and that I now understand the proceedings in this case against me.

(10). I know the court will not accept a plea of "GUILTY" from anyone who claims to be innocent and, with that in mind and because I make no claim of innocence, I wish to plead "GUILTY", and respectfully request the court to accept my plea, as follows:

(*) **GUILTY AS CHARGED IN COUNT ONE**

(11) I declare that I offer my plea of "GUILTY" freely and voluntarily and of my own accord; also that my attorney has explained to me, and I feel and believe I understand, the statements set forth in the indictment (information), and in this petition, and in the "Certificate of Counsel" which is attached to this petition.

(12) I further state that I wish the court to omit and consider as waived by me all reading of the indictment (information) in open court, and all further proceedings upon my arraignment, and I pray the court to enter now my plea of "GUILTY" as set forth above in paragraph 10 of this petition, in reliance upon my statements made in this petition.

Signed by me in open court in the presence of my attorney
this 17th day of January, 19 75

Carlo Guadalupe
Defendant

(*) The defendant's plea of "GUILTY" or "Not Guilty" as to each offense charged against him should be entered in the blank space provided in paragraph 10. If but a single offense is charged, the defendant who wishes to plead "GUILTY" should write in paragraph 10: "GUILTY" as charged in the indictment (information). If more than one offense be charged, the defendant may write in paragraph 10: "GUILTY" as charged in Count I of the indictment (information), etc. "Not Guilty" as charged in Count , etc.

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counsellor for the
 defendant above named Charles C. Conner

hereby certifies as follows:

(1) I have read and fully explained to the defendant all the accusations against the defendant which are set forth in the indictment (information) in this case;

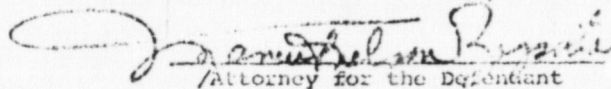
(2) To the best of my knowledge and belief each statement set forth in the foregoing petition is in all respects accurate and true;

(3) The plea of "GUILTY", as offered by the defendant in paragraph 10 of the foregoing petition, accords with my understanding of the facts as related to me by the defendant, and is consistent with my advice to the defendant;

(4) In my opinion the defendant's waiver of all reading of the indictment (information) in open court, and of all further proceedings upon arraignment as provided in Rule 10, is voluntarily and understandingly made; and I recommend to the court that the waiver be accepted by the court;

(5) In my opinion the plea of "GUILTY", as offered by the defendant in paragraph 10 of the foregoing petition, is voluntarily and understandingly made; and I recommend to the court that the plea of "GUILTY" be now accepted and entered on behalf of the defendant as requested in paragraph 10 of the foregoing petition.

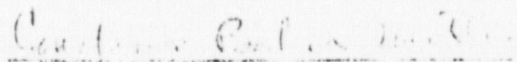
Signed by me in open court in the presence of the
 defendant above named this 17th day of January, 1975


 Attorney for the Defendant

O R D E R

Good cause appearing therefor from the foregoing petition of the defendant above named and the certificate of his counsel, and from all proceedings heretofore had in this case, IT IS ORDERED that the petition be granted and that the defendant's plea of "GUILTY" be accepted and entered as prayed in the petition and as recommended in the certificate of counsel.

Done in open court this 17 day of January, 1975


 United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | | |
|---------------------------|---|---------------------|----------|
| UNITED STATES OF AMERICA, |) | No. 7 | Crim. 11 |
| Plaintiff, |) | | |
| |) | PETITION TO ENTER | |
| v. |) | PLEA OF GUILTY | |
| <i>Fredo A. ...</i> |) | (Fed. R. Cr. Proc., | |
| |) | Rules 10 and 11) | |
| Defendant. |) | | |

The defendant above named respectfully represents to the Court as follows:

(1) My full true name is: *Paulo Alonzo*

and I request that all proceedings against me be had in the name which I here declare to be my true name.

(2) I am represented by counsel and the name of my attorney is: *Robert Mitchell*

(3) I have received a copy of the indictment (information) before being called upon to plead, and have read and discussed it with my attorney, and believe and feel that I understand every accusation made against me in this case.

(4) I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the indictment (information), and believe and feel that my attorney is fully informed as to all such matters. My attorney has since informed me, and has counselled and advised with me, as to the nature and cause of every accusation against me, and as to any possible defenses I might have in this case.

(5) My attorney has advised me that the punishment which the law provides, is as follows: A maximum of 5 years imprisonment (and a minimum of 0 years imprisonment) and a fine of \$500.00 for the offense charged in (Count 1 of the indictment (information);

also that probation may or may not be granted; and that if I plead "GUILTY" to more than one offense, the court may order the sentence to be served consecutively, one after another.

(6) I understand that I may, if I so choose, plead "Not Guilty" to any offense charged against me, and that if I choose to plead "Not Guilty" the Constitution guarantees me: (a) the right to a speedy and public trial by jury; (b) the right to see and hear all witnesses against me; (c) the right to use the power and process of the court to compel the production of any evidence, including the attendance of any witnesses, in my favor; and (d) the right to have the assistance of counsel in my defense at all stages of the proceedings.

(7) I also understand that if I plead "GUILTY" the court may impose the same punishment as if I had pleaded "Not Guilty", stood trial and been convicted by a jury.

(8) I declare that no officer or agent of any branch of government (Federal, State or local), nor any other person has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I would receive a lighter sentence, or probation, or any other form of leniency, if I would plead "GUILTY". I hope to receive probation, but am prepared to accept any punishment permitted by law which the court may see fit to impose. ~~I respectfully request that the court consider an allocation of punishment to the defendant who has pleaded "GUILTY" voluntarily. I have never been convicted of any crime and I am innocent of the crime charged in the indictment.~~ (Fed. R. Crim. Proc., Rule 32(a)).

(9) I believe and feel that my attorney has done all that anyone could do to counsel and assist me, and that I now understand the proceedings in this case against me.

(10). I know the court will not accept a plea of "GUILTY" from anyone who claims to be innocent and, with that in mind and because I make no claim of innocence, I wish to plead "GUILTY", and respectfully request the court to accept my plea, as follows:

(*) *guilty as to Count 1, 2*

(11) I declare that I offer my plea of "GUILTY" freely and voluntarily and of my own accord; also that my attorney has explained to me, and I feel and believe I understand, the statements set forth in the indictment (information), and in this petition, and the "Certificate of Counsel" which is attached to this petition.

(12) I further state that I wish the court to omit and consider as waived by me all reading of the indictment (information) in open court, and all further proceedings upon my arraignment, and I pray the court to enter now my plea of "GUILTY" as set forth above in paragraph 10 of this petition, in reliance upon my statements made in this petition.

Signed by me in open court in the presence of my attorney
is 2004 day of July, 1904.

[Signature]
Defendant

The defendant's plea of "GUILTY" or "Not Guilty" as once charged against him should be entered in the blank provided in paragraph 10. If but a single offense is charged and the defendant wishes to plead "GUILTY" should write in paragraph 10 "GUILTY" as charged in the indictment (information). If more than one offense be charged, the defendant may write in paragraph 10 "GUILTY" as charged in Count 1 of the indictment (information) "Not Guilty" as charged in Count 2, etc.

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counsellor for the
defendant above named R. Lee McSally

hereby certifies as follows:

(1) I have read and fully explained to the defendant all the accusations against the defendant which are set forth in the indictment (information) in this case;

(2) To the best of my knowledge and belief each statement set forth in the foregoing petition is in all respects accurate and true;

(3) The plea of "GUILTY", as offered by the defendant in paragraph 10 of the foregoing petition, accords with my understanding of the facts as related to me by the defendant, and is consistent with my advice to the defendant;

(4) In my opinion the defendant's waiver of all reading of the indictment (information) in open court, and of all further proceedings upon arraignment as provided in Rule 10, is voluntarily and understandingly made; and I recommend to the court that the waiver be accepted by the court;

(5) In my opinion the plea of "GUILTY", as offered by the defendant in paragraph 10 of the foregoing petition, is voluntarily and understandingly made; and I recommend to the court that the plea of "GUILTY" be now accepted and entered on behalf of the defendant as requested in paragraph 10 of the foregoing petition.

Signed by me in open court in the presence of the
defendant above named this 25 day of Feb 1972.

R. Lee McSally
/Attorney for the Defendant

O R D E R

Good cause appearing therefor from the foregoing petition of the defendant above named and the certificate of his counsel, and from all proceedings heretofore had in this case, IT IS ORDERED that the petition be granted and that the defendant's plea of "GUILTY" be accepted and entered as prayed in the petition and as recommended in the certificate of counsel.

Done in open court this 25 day of Feb 1972.

(1)
United States District Judge

430 - By Harold
 Robert Murray - By Mary Richmond
 James Sims - By Neil Sperner
 Frank Sims - By RICHARD ROSENBAUM
 John Sims - By Jeffrey Hager
 (CT-1 filed 1-17-75) Carlos CORDADO - By Nelson
 Cleo Williams - By Roland
 Wornell Vega ^{NOTED} - By Else
 Eddie Jackson - By David Greenfield
 (Only CT 2 only) LEO ALICEA - By Robert
 (filed 1-28-75)

12/31/1975

On motion of A + on consent of U.S. (as
 SUSO Fearing), and in the absence of Judge Matley,
 the matter having been referred to the undersigned,
 the order on Wornell Vega is discharged and the
 matter is dismissed.

Gerald Smith
 United States Magistrate
 Southern District of New York

near all witnesses against me; (c) the right to use the power and
 process of the court to compel the production of any evidence,
 including the attendance of any witnesses, in my favor; and (d)
 the right to have the assistance of counsel in my defense at all
 stages of the proceedings.

EXCERPTS FROM TRIAL TESTIMONY

31a

278

1 MP 17

Alicea - cross

2 Q Aside from Mr. Markowski, how many times did you
3 speak to Detective Cummings or Detective Mohan?

4 A I do not recall.

5 Q Well, give me your best estimate.

6 A I have spoken to them as many times as I have come
7 down to see the attorneys.

8 Q Well, how many times is that, to the best of your
9 ability?

10 A I do not recall.

11 Q Could it have been about fifty times?

A Fifty times, yes.

13 Q About fifty times. And how about in relationship
14 to Mr. Markowski? You have spoken to him over the period of
15 a year?

16 A Yes.

17 Q So we have three people you have spoken to, well
18 over fifty times?

19 A Yes.

20 Q Whom else did you speak to concerning this particular
21 case?

22 A To the District Attorney. It was Kenneth Feinberg.

23 Q You mean the U. S. Attorney, not the District
24 Attorney?

25 A Yes.

1 MP 18 Alicea - cross

2 Q And did you speak to Mr. Feinberg on several oc-
3 casions?

4 A Several occasions.

5 Q How many times, would you say?

6 A I do not recall.

7 Q Fifteen?

8 A I do not recall.

9 Q To the best of your ability, if you could help me.

10 A Twenty-five.

11 Q Twenty-five. So now you have gone over your story
12 over seventy-five if not more times. Aside from Mr. Feinberg,
13 did you speak to anybody else?

14 A I later spoke to Mr. Harris.

15 Q How many times did you speak to Mr. Harris?

16 A Mr. Harris was put on the case when Mr. Feinberg
17 left.

18 Q Well, how many times did you speak to him?

19 A If you are asking for a wild guess, I will give you
20 a wild guess.

21 Q Give me your best estimate, not a wild guess.

22 A I cannot estimate.

23 Q Forty times? Fifty times? Seventy times?

24 A I do not know.

25 Q A lot? A little?

33a

- 1 MP 19 Alicea - cross
- 2 A A lot.
- 3 Q How much is a lot? More than twenty-five?
- 4 A No.
- 5 Q More than fifteen?
- 6 A I do not know.
- 7 Q Well, would you say about fifteen?
- 8 A I do not know.
- 9 Q So in all, you spoke to the four or five people
- 10 you have mentioned so far upwards of seventy-five to ninety
- 11 times? Is that a fair estimate?
- 12 A Yes.
- 13 Q Okay. Now, you said there were seven people you
- 14 spoke to. Will you tell us the other two?
- 15 A Ronald Garnett.
- 16 Q How many times did you speak to him?
- 17 A I do not recall.
- 18 Q Well --
- 19 A There are three District Attorneys now --
- 20 Q U. S. Attorneys?
- 21 A -- U. S. Attorneys now. I have spoken to each one
- 22 or together at some point or another.
- 23 Q So Mr. Garnett and Mr. Littlefield will finish off
- 24 the seven people you spoke to?
- 25 A Yes.

1 Q How much time did you spend in the brig?

2 Please answer the question.

3 A I was AWOL --

4 Q How much time did you spend in the brig?

5 How long?

6 A There were a number of times I was in the

7 brig, sir.

8 Q How long?

9 A I do not recall.

10 Q The brig is jail, isn't it?

11 A That's right.

12 Q And how long did you spend? Would you

13 say a year?

14 A No, sir.

15 Q More or less?

16 A At one time, sir?

17 Q Not at one time. Collectively, altogether.

18 A I don't recall.

19 Q And aside from spending some time in the

20 brig, which you can't recall, how long were you

21 AWOL?

22 "AWOL" means absent without leave?

23 A Yes, sir.

24 Q How long were you AWOL?

25

mpa7

Alicea-cross

310

1

2

A Together?

3

Q Together.

4

A Possibly two years.

5

Q About two years of your four years you

6

were AWOL?

7

A Yes, sir.

8

Q Well, how long were you actually doing any-

9

thing for the Navy?

10

A I do not recall.

11

Q You don't recall. Would you say a couple

12

of months?

13

A No, sir.

14

Q I beg your pardon?

15

A No, sir.

16

Q Less?

17

A No, sir.

18

Q And when you finally came back to the Navy,

19

you didn't surrender voluntarily; they came to get

20

you, didn't they?

21

A At times I surrendered; at times they brought

22

me in.

23

Q At times. How many times did you go AWOL?

24

A Approximately seven times.

25

Q Approximately seven times. And what was

mpa8

Alicea-cross

311

the shortest period of time you were AWOL?

A I don't remember.

Q And what was the longest time you were
AWOL?

A I would say about a year and two months.

Q A year and two months. Did they ever
charge you for desertion?

A I don't remember.

Q You don't remember?

A I don't remember.

Q What kind of discharge did you get?

A Dishonorable discharge.

Q A dishonorable discharge, not a bad conduct
discharge?

A A dishonorable discharge.

Q That's worse than a bad conduct discharge?

MR. LITTLEFIELD: Objection, your Honor.
This whole line of cross examination is improper. I
haven't objected up to date. Bad acts, in this court,
not up to the level of a felony are not the subject
of cross examination. I haven't objected, but if
Mr. Richman is going to that, it is going too far.

MR. RICHMAN: I am not going into any-
thing. I just asked a question.

mpal0

Alicea-cross

313

Q And I suggested to you earlier that you might have entered the service on the 1st day of June, 1966, you said that could be also?

A I could bring in the record if you want me to, sir.

Q Very well.

Now, Mr. Alicea, you say in January, 1970 or thereabouts you left the service. What did you do immediately thereafter?

A Immediately thereafter I had a number of small jobs, until I went to work for Prudential Insurance.

Q The small jobs: where were they and when were they?

A I believe I worked for dry cleaners at one time in Manhattan. I don't recall where it was, 90th Street.

Q How long did you work there?

A I do not recall. It was a means of which to get by until I got a better job.

Q Are you married?

A Yes, sir.

Q And when were you married?

A I don't recall.

1

2

Q Are you legally married?

3

A Yes, sir.

4

Q And you don't recall when you were married?

5

A No, sir.

6

Q Do you have children?

7

A Yes, sir.

8

Q Do you remember what year you were married?

9

A No, sir.

10

Q How about what decade? Do you remember

11

that? Was it in the '60s or the '70s?

12

A I believe the '60s.

13

Q Are you sure of the '60s?

14

A I didn't say that, sir. I believe the

15

'60s.

16

Q Do you know whether or not you were

17

married in the '60s or the '70s?

18

How old are you?

19

A Twenty-seven.

20

Q You don't remember if you were married in

21

the '60s or the '70s?

22

A That's correct, sir.

23

Q Now, when did you start working for Pru-

24

dential Insurance Company?

25

A I don't remember, sir. Shortly thereafter,

mpa

Alicea-cross

318

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes, sir.

Q Now, how much did you get paid in that job
when you first started working there?

A I believe it was \$5000.

Q 5000 --

A A year.

Q And eventually you got raises?

A Yes, sir.

Q And you got promotions in that job?

A Yes, sir.

Q You never gave Mr. Munoz anything, did you?

A For that favor he asked me to demonstrate
on demonstrations, sir.

Q And demonstrations was for the purpose of
picketing?

A Yes, sir.

Q To secure jobs for blacks and Puerto Ricans?

A Yes, sir.

Q Mr. Munoz was very successful in acquiring
jobs for many people, blacks and Puerto Ricans, was he
not?

A Yes, sir.

Q I beg your pardon?

A Yes, sir.

1 A It is not the City equivalency, it is the
2 Military equivalency program, and it is very different
3 from the City equivalency.
4

5 Q Let's get to bring this up to date. When
6 did you leave OTB?

7 A I left OTB, I believe, in 1972.

8 Q 1972? When did you start again? Just fill me
9 in, if you could.

10 A When did I start OTB? I believe late 1971.

11 Q Can you tell us approximately what portion of the
12 year of 1972 that you left OTB?

13 A No, sir, I cannot.

14 Q You don't remember what portion of the year?

15 A No, sir.

16 Q Was it within the 1st of 1972, early, Januar
17 February or March? How long did you work for OTB?

18 A About a year, sir.

19 Q About a year? Would you say you left toward
20 the end of 1972?

21 A I don't recall.

22 Q You just said you started about the end of
23 1971?

24 MR. LITTLEFIELD: Objection, your Honor.
25 Earlier he said he started in 1971, and then he said

1 mpa

Alicea-cross

2 MR. RICHMAN: Thank your Honor.

3 (Defendant's Exhibit A for identification
4 was received in evidence.)

5 CROSS EXAMINATION CONTINUED

6 BY MR. RICHMAN:

7 Q Does this refresh your recollection as to
8 when you started employment?

9 A No.

10 Q Referring to Exhibit A.

11 A No, sir.

12 Q Would the date November 16th refresh your
13 recollection?

14 A No, sir.

15 Q It doesn't?

16 A No, sir.

17 Q Would I be correct in stating that on or
18 about November 16th you started to work for the Hunts
19 Point Community Corporation?

20 A No, sir.

21 Q Did you start working for them later or
22 earlier?

23 A To the best of my recollection, sir, I was
24 working for them before I was put on the payroll.

25 Q I show you Munoz Exhibit B for identifica-

1
2 A No, sir.

3 Q If I suggested the date to you as July 15,
4 1973, would that refresh your recollection as to the
5 termination of your employment with the community
6 corporation?

7 A No, sir.

8 Q You were terminated, were you not?

9 A Yes, sir.

10 Q Why were you terminated?

11 A Because of previous arguments with Mr.
12 Munoz.

13 Q You had arguments with Mr. Munoz?

14 A Yes, sir.

15 Q Were you angry with Mr. Munoz?

16 A No, sir.

17 Q You were never angry with Mr. Munoz?

18 A No, sir.

19 Q You like Mr. Munoz?

20 A Yes, sir.

21 Q You like him very much?

22 A Yes, sir.

23 Q There's no question he is a friend of yours?

24 A Not now, sir.

25 Q Well, he did help you get a job?

1 rpl

Alicea-cross

T5

2 THE COURT: Do you want to bring the jury in?

3 MR.LITTLEFIELD: Before the tapes are played

4 I assume Mr. Richman or somebody will instruct the jury
5 these were turned over by the government pursuant to 3500
6 rules, so there is no confusion as to where they came from.

7 MR. RICHMAN: I think I made it quite clear
8 that the tapes were made while he was being interviewed by
9 the government.

10 THE COURT: I will instruct the jury.

11 (Jury present.)

12 THE COURT: Ladies and gentlemen, at this time
13 Mr. Richman is going to play a tape of a statement made by
14 this witness to law-enforcement officers prior to the trial.
15 You recall yesterday that Mr. Richman explained to you that
16 after a witness testifies for the government in any criminal
17 case, the government has a legal obligation to turn over to
18 defense counsel any statement which that witness made to a
19 government agent prior to testifying on the trial.

20 So this tape was one of those documents turned
21 over by the government in this case to defense counsel.

22 Allright, you may proceed now, Mr. Richman.

23 BY MR. RICHMAN:

24 Q Will this now refresh your recollection as to
25 whether or not you said that about Bob Munoz?

1 rp2

2 (Tape played.)

3 MR. LITTLEFIELD: Perhaps you could let it run
4 and we will listen to whatever it is and get up to the point
5 you want.

6 MR. RICHMAN: There is no reason for that,
7 Mr. Littlefield, you were sitting next to me when we found
8 this point.

9 MR. LITTLEFIELD: Just let it run and we will
10 get to it. I assume that is the best way to find it.

11 (Tape played.)

12 Q Does this refresh your recollection as to whether
13 or not you said, "This is something I would like to see
14 when the Federal checks -- really, I would like to get Bob,
15 that Son-of-a-Bitch."

16 Does that refresh your recollection?

17 A I don't recall hearing Son-of-a-Bitch.

18 Q You don't recall it? Do you want me to play it
19 again for you?

20 A Yes, sir.

21 (Tape replayed.)

22 MR. LITTLEFIELD: I heard it.

23 MR. GREENFIELD: May the record reflect we
24 heard it.

25 Q Did you hear it?

45a

rp10

Alicia-cross

1 rp10
2 MR. RICHMAN: The best evidence rule does not
3 apply here.

4 THE COURT: Where do you say the original is?

5 MR. RICHMAN: The witness recognizes --

6 THE COURT: What do you say?

7 MR. RICHMAN: When a bona fide hostile witness --

8 THE COURT: No. That is not the rule.
9 The rule is that the original is to be introduced unless
10 its absence is explained.

11 MR. RICHMAN: I don't know where the original is,
12 your Honor. I can probably produce the original in some
13 time but for the purpose of this examination I would like
14 to have the copy submitted and if and when the original
15 appears I will substitute it.

16 THE COURT: Where did the copy come from?

17 MR. RICHMAN: From the corporation which I
18 had subpoenaed. I had subpoenaed copies of all records
19 and I should have subpoenaed originals of all records.

20 MR. LITTLEFIELD: Then, your Honor, the govern-
21 ment has no application to its admission subject to the
22 fact that before -- within the next few days we do see the
23 original.

24 THE COURT: All right, take it subject to
25 investigation as to the original.

mpa

Alicea-cross

371

about April 13, 1973, that you, James Sims and Frank Sims met at the vicinity of 167th Street and Union Avenue in the Bronx?

"A Yes."

Did you give that response to that question?

A Yes, sir.

Q But you didn't know the date, did you?

A No, sir.

Q If the man who asked you the question gave you any date he wanted you would have said the same response, "Yes," correct?

A Yes, sir.

MR. LEWIS: Your Honor, based on this examination, I have a motion -- can we have a side bar?

THE COURT: Make your motion there.

MR. LEWIS: In view of what happened yesterday, your Honor, I would suggest --

THE COURT: What is your motion?

MR. LEWIS: To dismiss the indictment on the grounds that the testimony, the substantial testimony, of the grand jury was perjured testimony, admitted by the witness at this time.

THE COURT: That motion is denied.

All right, you may proceed, Mr. Richman.

1 mpa
2 protective custody.

3 Q And how long is that --

4 MR. HARRIS: I didn't hear the answer.

5 MR. RICHMAN: Since he has been in protective
6 custody he hasn't worked.

7 Q How long has that been?

8 A Ten or 11 months, sir.

9 Q And who has been paying you, supporting you?

10 A The U. S. Government, sir.

11 Q And how much are they supporting you?

12 A \$500 a month, sir.

13 Q Does that include your rent?

14 A No, sir.

15 Q Do they pay your rent also?

16 A I have no knowledge of the rent --

17 Q Well, you don't pay rent, in other words,
18 out of that 500?

19 A No, sir.

20 Q And you don't pay gas and electric either,
21 the government does that for you as well?

22 A Yes, sir.

23 Q And they rented furniture for you as well?

24 A Yes, sir.

25 Q So for the last 11 months you have been living

mpa

Alicea-cross

386

2 Q Do they give it to you in cash or check?

3 THE COURT: Do they give what?

4 MR. RICHMAN: The \$500 a month.

5 A They bring it in cash, sir.

6 Q In cash?

7 A Yes, sir.

8 Q Tens, 20s or 100s?

9 A Either/or.

10 Q Either/or. You will take what comes,

11 right?

12 A Yes, sir.

13 Q They also promised something else to you,

14 didn't they?

15 A Is that a question?

16 Q I should hope so.

17 A I thought you were going to go on.

18 Q Did they promise something else to you?

19 THE COURT: In addition --

20 MR. RICHMAN: In addition to the \$500 a
21 month, the rent being paid, the witness fees and what
22 have you.

23 A Well, that falls under protection.

24 Q Yes or no, did they promise you anything

25 else?

Alicea-cross

Q Look, I am talking about 1972. Give me an answer. If you can't, say you can't.

A I cannot give you a specific date, no, sir.

Q Did you tell the government that you intended to declare this money in your income tax return for 1973?

A I told them I had not claimed any taxes on this money.

Q Did they tell you they wouldn't prosecute you for that?

A I don't remember, sir.

Q You don't remember if they told you that or not?

A No, sir.

Q Now, Mr. Alicea, you stated that at these meetings, that you would occasionally come to would be in Mr. Munoz's office?

A Yes.

Q 809 or wherever it might be --

A 1463 or 809.

Q Where would most of those meetings take place?

A Mr. Munoz's office or the conference room.

Q Where, 1463 or 809?

A I believe 1463.

Q How many meetings occurred at 809?

A I don't recall.

50a

A'icea-cross

rp3

1

2

Q You don't recall?

3

A No, sir.

4

Q A lot of them, a few of them?

5

A I don't recall.

6

Q You don't recall?

7

A No.

xx

8

(Defendant Munoz's Exhibit E marked for

9

identification.)

10

Q You went into the hospital October 13, 1973?

11

A I believe that is the date, sir.

12

Q Is it the date or isn't it the date? You

13

said you were sure of that date because you had a card or

14

something. Are you not sure?

15

A The card has the date and it was given to the

16

agent to verify with the hospital. I am not sure what

17

that date means.

18

Q Did you testify that on October 13 --

19

A I said approximately 1973, yes, sir.

20

Q How many meetings would you say you had at 809

21

at the Hunts Point Community Corporation before you went

22

into the hospital?

23

A I don't remember, sir.

24

Q Was there one meeting?

25

A I don't remember, sir.

51a

Alicea-cross

rp0

a particular date.

MR. RICHMAN: Correct.

THE COURT: You are now switching the question and saying March 18, June 16 --

MR. RICHMAN: Correct.

THE COURT: Which one do you want him to answer?

MR. RICHMAN: He is answering as to each as i go along. He says "I don't remember, I don't remember, I don't remember."

THE COURT: Let me ask you this, are you asking him whether he recalls there was a meeting prior to those incidents on those particular dates? Is that it?

MR. RICHMAN: Correct.

THE COURT: What you are asking him is whether he remembers the date, is that it?

MR. RICHMAN: Your Honor, I am asking if he remembers meetings on those days.

THE COURT: All right, that will be clear.

Q November, 1972 -- I will start again.

A I am not saying I don't recall any dates of meetings or bombings or arsons.

Q If I read all the dates in the indictment they wouldn't mean a thing to you?

A No, sir.

rp

given the grand jury by Mr. Alicea for this reason.

It was obvious to the government that Mr. Alicea knew nothing of any dates, indeed, not any of the seasons with which to deal with, so that he can say in good faith that an incident happened on or about July 15, and, with that knowledge which the government possessed, it presented him to the grand jury and led him outrageously, spelling out dates and sites to this man which resulted in the return of a very specific indictment against all these defendants charging a variety of crimes committed on specific dates.

53a

I think that this action on the part of the government was really putting one over on the grand jury, to put it bluntly, and now putting one over on the court and us.

MR. LITTLEFIELD: If there is any issue about that, your Honor, we will turn over to the court 1500 pages of testimony of firemen, policemen, construction workers of all kinds, to know just what the grand jury heard. This was probably one of the longest grand jury investigations and most thorough -- Mr. Feinberg and Mr. Putzel conducted it --

THE COURT: The motion is denied.

MR. GREENFIELD: Your Honor, the first time my client was indicted was in the superseding indictment. The only witness who testified in the second investigation, not the first, was Mr. Alicea. He didn't offer one shred of evidence against Eddie Jackson if it hadn't been offered by the government in the form of a question, and the only evidence against Eddie Jackson in the second grand jury proceeding that had not been offered in the first apparently was the testimony of Mr. Alicea.

THE COURT: Well, Mr. Alicea testified he didn't remember any date, that the date was supplied by

m pa

Q Your brother died?

A Yes, sir.

Q You were broke and you weren't doing well,
were you?

A No, sir.

Q And your brother died in Philadelphia, right?

A Yes, sir.

Q And you had to go to Philadelphia to bury
him?

A Yes, sir.

Q And whom did you go to to help you with
this?

A I called Bob Munoz.

Q And you said, Bob, I need some help?"

A Yes.

Q And you said you needed some money, \$700?

A Yes.

Q The same Bob Munoz you are testifying against
today?

A Yes, sir.

Q You didn't threaten him?

A No, sir.

Q You needed help because your brother died?

A Yes, sir.

mpa

Alicea-cross

434

Q How many times did you meet or do you claim to have met with Mr. Munoz prior to these alleged incidents?

A Approximately four times.

Q Four times?

A Yes.

Q Before what incident did you meet with him?

MR. LITTLEFIELD: Your Honor, I don't think I understood the last question and answer. Could I have it read back?

(Record read.)

MR. LITTLEFIELD: Could I have a clarification to what incidents Mr. Richman is referring: the incidents about which he's testified to here or what incidents?

MR. RICHMAN: I assume it's the incidents he testified about here. I don't think we are on trial for anything else.

MR. LITTLEFIELD: In other words, you are referring to the incidents in respect to each of the construction sites, is that right?

MR. RICHMAN: I am referring to what he testified were allegedly the facts yesterday.

MR. LITTLEFIELD: Very well.

MR. LEWIS: The summer of 1972.

THE COURT: The summer of 1973 -- having an argument with the defendant James Sims which led to a breakup of their friendship.

MR. LEWIS: All right. I except, your Honor.

(In open court; jury present.)

BY MR. LEWIS:

Q Did there come a time, Mr. Alicea, in the summer of '73, when you had any confrontation with Mr. Sims about anything that caused a breakup of your friendship?

A I don't recall anything that broke up the friendship, no, sir.

MR. THAU: Can't hear him, your Honor.

THE WITNESS: I can't recall anything that broke up the friendship, no, sir.

Q Did Mr. Sims ever fire you from the guard service?

A Yes, sir.

Q That didn't break up your friendship?

A No, sir.

Q By the way, why were you fired from the guard service?

1 A I didn't show. I didn't call. I didn't
3 bother with it.

4 Q Wasn't it your testimony that you were just
6 on the payroll and weren't required to do any work at
all? Wasn't that your testimony?

7 A Yes. I also stated that I was 'to go on
8 assignments.

9 Q I am talking about the guard service.

10 A Also on the guard service. That's why
11 I was on the payroll, to be accessible.

12 Q Will you please repeat why you were fired?

13 A I didn't show, I didn't call, I didn't
14 bother to go.

15 Q Thank you. When you worked for the
16 guard service, what name did you use?

17 A I believe it was Rodriguez or something.
18 It was a name just thought up by Jimmy or Mr. Munoz --
19 I don't recall who. They also put down at 10 dependents
20 so I would get more money out of it.

21 Q I didn't ask you that question.

22 A I am sorry.

23 Q Did you choose the name Rodriguez?

24 A No, sir.

25 Q Did you file a tax return in the name of

1 mpa

2 A Yes, sir.

3 Q Do you remember the hit you made or said
4 you made in Paramus?

5 A New Jersey, yes, sir.

6 Q Will you describe that building?

7 A It was a brown building with a glass en-
8 trance. There was a parking area around it. There
9 were plants and flowers next to the building. There
10 was a shopping center close by. There was some
11 construction --

12 Q How tall was the building?

13 A I'm not sure. I think it was just one
14 floor.

15 Q You aren't sure?

16 A I am not sure.

17 Q Are you sure of anything?

18 MR. LITTLEFIELD: Objection.

19 Q Are you sure your testimony is true?

20 MR. LITTLEFIELD: Objection, your Honor.

21 MR. LEWIS: It's a proper question.

22 THE COURT: Answer the question.

23 A My testimony is true to the best of my
24 knowledge and that I can remember.

25 Q To the best of your knowledge and that you

1 asked you how Jimmy stands with her now? Do you recall
2 that question?

3
4 A I believe so, yes.

5 Q Do you recall what your answer was?

6 A Not the exact words.

7 Q Anyone --

8 A I told him he wasn't in good standing with
9 her, that she a numbef of times had pleaded and asked
10 him to help with the baby, it was his child, that she
11 wouldn't have had the baby if he had not asked her to
12 bear it, that she often saw him gambling in the corner
13 and dropping five or six hundred dollars and he
14 wouldn't give her \$10 for the baby.

15 Q Do you recall telling all this to the
16 police officer?

17 A Well, that's the best way I could describe
18 how she feels about him. I don't know how she feels
19 inside.

20 Q Isn't it a fact that the answer you gave
21 was "Very bad"?

22 A I do not recall the words I said.

23 Q In regards to the St. Ann's site, do you
24 recall that site?

25 A 147th Street and St. Ann's?

60a

rp2

Alicea-cross

1
2 "Mohan: All the same to you? What was the
3 metal again?

4 "Alicea: It was like iron. I don't know.

5 "Mohan: Was it light or heavy?

6 "Alicea: Heavy.

7 "Markowitz: Heavier than the other one on
8 March 28, right?

9 "Alicea: They were all pretty heavy. I think
10 the metal made them heavy, not so much what was inside."

11 Do you recall this testimony?

12 A Yes, sir.

13 MR. LITTLEFIELD: Is this supposed to be ir-
14 consistent with something? I don't understand.

15 MR. LEWIS: He testified he never touched the
16 bomb.

17 MR. RICHMAN: Mr. Littlefield is volunteering
18 continuously this is not the way it should be done. It
19 is for the jury to determine whether it is inconsistent.

20 MR. LITTLEFIELD: It has to be offered as if
21 to suggest that it is inconsistent. You just can't read
22 anything unless it is supposed to be inconsistent. I
23 don't see what is inconsistent about that.

24 MR. LEWIS: The testimony was he never touched
25 this bomb.

61a

rp3

Alicea-cross

1
2 THE COURT: Mr. Lewis, are you asking this
3 witness about the pipe bomb which is in evidence?

4 MR. LEWIS: No, there was a bomb used on the
5 St. Ann's site that the witness testified he never touched.
6 He is then asked, and I think the government will concede
7 this was the inquiry about that site. They asked him if
8 it was heavy or light, and he said neavy, and he was asked
9 "Heavier than the others?" And his answer was "Yes."
10 That is inconsistent. How could he know it was heavier
11 without touching it?

12 Q How much money did you make from all these
13 incidents, do you recall?

14 A From what?

15 Q What was the total compensation to you from
16 your participation in these bombing incidents?

17 A I believe in the area of 2200 to 3300.

18 Q 22 or 33. Did you put it in a savings bank
19 or spend it or what did you do with it?

20 A We spent it as we made it, yes, sir.

21 Q Before you testified in this courtroom were you
22 given any instructions by anybody in the government?

23 A I beg your pardon?

24 Q Did they tell you how to testify?

25 A Yes, sir.

1 meetings that occurred at your home?

2
3 A Yes.

4 Q Am I right?

5 A Yes.

6 Q And in these conversations and in these
7 many meetings, you stated that you heard conversations
8 about arson and bombings et cetera?

9 A Yes.

10 Q At any one of these arson discussions or
11 meetings of any kind whatever, of all the meetings in
12 your house, was Mr. Munoz ever present?

13 A No, never.

14 Q So it's your testimony that Mr. Sims -- I
15 am sorry -- Mr. Munoz was never present during any of
16 these conversations?

17 A That's correct.

18 Q Now, you also testified that you went to
19 several sites where they had had arsons or bombings or
20 what have you and you went with Mr. Sims. You said
21 that, didn't you?

22 A Yes.

23 Q At any of these times that you went, in-
24 cluding the time you went to the Fordham Road newspaper
25 stand, was Mr. Munoz ever present?

mpa

A No.

Q I am sorry --

A No.

Q So all you know about anything that you have testified this morning as it relates to Mr. Munoz you overheard from James Sims?

A Yes.

Q You know nothing of your own knowledge concerning Mr. Munoz? I mean, from your own experiences.

A Of him saying anything himself to me?

Q Saying anything himself or doing anything.

A No.

Q Aside from the things you testified to this morning about what Mr. Sims may have said in your presence, I am sure you had many other conversations with Mr. Sims about other things during the period of time you lived with him, right?

A Yes.

Q I mean, it's only normal.

Did you ever hear about a discussion between Mr. Sims and Mr. Alicea on how they beat or cheated Mr. Munoz out of \$600?

A No.

1
2 Q Did Mr. Sims or Mr. Alicea, in your com-
3 pany, say that they had lost \$600 in a card game and
4 they said they were going to call Bob and tell him that
5 they were robbed or the police had taken it from them?
6 Did you ever hear that story?

7 A No.

8 Q Now, you got to know Jim Sims pretty well,
9 didn't you?

10 A Yes.

11 Q Would you say that he had a tendency some-
12 times to exaggerate?

13 A Yes.

14 Q I mean, he would put other people on, wouldn't
15 he, a lot?

16 A What is that?

17 Q He would put other people on about his im-
18 portance, is that right?

19 A Yes.

20 Q And he would sometimes stretch the truth
21 to other people around him?

22 A Yes.

23 Q And he would sometimes try to impress even
24 you?

25 A He was rather truthful with me.

1 of a construction site?

2 A It seems because there was some violence
3 at that site.

4 Q But it was for demonstrating. It wasn't
5 for bombing or arson or anything like that?

6 A No.

7 Q And you saw Mr. Munoz come down to help or
8 bail these men out of jail?

9 A Yes. I saw him come down.

10 Q And you saw him talking in a loud manner to
11 Mr. Sims?

12 A Yes.

13 Q He was angry, wasn't he?

14 A Yes.

15 Q He was angry with Mr. Sims for being ar-
16 rested or getting in trouble?

17 A I have no knowledge of that.

18 Q But you saw him angry?

19 A Yes.

20 Q And then Mr. Sims went his way and Mr. Munoz
21 went his way?

22 A No.

23 Q Well, didn't you tell us this morning that
24 after some discussion they talked back and forth and
25

1 rpl

2 Q What did he tell you?

3 A He said that --

4 Q Please speak up.

5 A He said that the government offered Bob Munoz
6 one million dollars and offered him a half-million dollars
7 in return for their testimony.

8 Q In other words, isn't it a fact that James Sims
9 told you that the government offered him a half-million
10 dollars to testify against Bob Munoz?

11 A Yes.

12 Q Did you know if he was telling the truth or was
13 that one of his fabled stories?

14 A He said it as being the truth.

15 Q Did you believe him?

16 A No.

17 Q Thank you.

18 THE COURT: I didn't hear the answer.

19 MR. RICHMAN: The answer is "No," your Honor.

20 THE WITNESS: "No."

21 Q Did he tell you how much Mr. Alicea was receiving
22 for testifying?

23 A He said that he had heard from someone supposedly
24 working in the United States Marshal -- with the District
25 Attorneys here, that they had offered Junior between

rp2

Ortiz-cross

twenty and twenty-five thousand dollars.

Q Isn't it a fact he phrased it "a mere \$20,000"?

A Yes.

Q Didn't he tell you also that the government promised to have any State charges against Mr. Alicea dropped if he did cooperate?

A Yes.

Q There came a time, Miss Ortiz, that you were subpoenaed on your birthday?

A Yes.

Q I am sure you were upset about receiving a subpoena?

A Yes.

Q I imagine when you started your relationship with Mr. Sims you care for him very deeply?

A Yes.

Q I assume you no longer cared for him as you did once you terminated your relationship?

A Yes.

Q There came a time when you received that subpoena, I am sure you were upset receiving it, as I indicated, is that correct?

A Yes.

Q You went to see Mr. Sims?

rp5

Ortiz-cross

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q I don't blame you. I imagine you were very upset?

A Not very, no.

Q Did there come a point that you got upset?

A No.

Q Well, when you went to the grand jury certain questions were asked of you?

A Yes.

Q You remember the answers you gave in the questions this morning?

A Yes.

Q But they were not the same answers you gave to the grand jury?

Well, if you recall -- was there an answer?
I am sorry, I am jumping.

These were not the same answers you gave the grand jury?

A They were not the same questions.

Q Thank you. You were asked this morning you recall testifying before the grand jury -- before this jury and the Court, about an incident that occurred on August 9, 1973. Do you remember that?

A Yes.

Q Would you be so kind as to tell me what occurred

rp7

Ortiz-cross

1
2 "Q You were not present? Were you present in your
3 apartment, Miss Ortiz, when James Sims and Mr. Fruto Alicea
4 discussed a hand grenade?

5 "A No."

6 Were you lying there, too?

7 A Yes.

8 Q You were under oath then, weren't you?

9 A Yes.

10 Q You were warned that you could be held for
11 perjury if you lied?

12 A I was more frightened of what would happen to me
13 if I testified, to me then.

14 THE COURT: Will you read the answer, Mr. Report-
15 er?

16 (Answer read.)

17 MR. GREENFIELD: Will you instruct the witness
18 to keep her voice up?

19 THE COURT: I so instructed her several times.

20 Q May I go on, Miss Ortiz? Line 24:

21 "Q Miss Ortiz, were you ever present in your apart-
22 ment at any time when pipe bombs were discussed by others
23 in your presence?

24 "A Not to my knowledge, no."

25 You were lying then as well?

rp9

Ortiz-cross

Were you telling the truth then?

A No.

Q Did you know what they looked like?

A Yes.

Q You were lying?

A Yes.

Q "Q You don't know what they looked like? Did you ever see James Sims or Frank Sims or Fruto Alicea ever hand something wrapped up in a towel to another person in your apartment?

"A No, not wrapped up in a towel."

Was that your answer?

A Yes.

Q "Q I am sorry?

"A Not wrapped up in a towel."

Was that your answer?

A Yes, it was true.

Q It was true?

A Right, not wrapped up in a towel.

Q But you never saw a bomb, it was only a half-truth?

A They were wrapped in cardboard.

Q When did you decide to answer these questions, to switch from lies to the truth?

rp10

Ortiz-cross

1
2 A It was true, not wrapped in a towel.

3 Q You were being technical?

4 A No. It was just not wrapped up in a towel.

5 Q Do you remember being asked this question:

6 "Q Was it wrapped up in anything?

7 "A No."

8 Was that your answer?

9 A Yes.

10 Q You were lying again?

11 A Yes.

12 Q So you switched again from lies to the truth or
13 from the truth to lies?

14 If you recall the previous question, you had said
15 "Not wrapped up in a towel," because you were telling the
16 truth and the next question was, "Was it wrapped up in any-
17 thing?" and your answer was, "No."

18 Therefore, you switched from the truth to a lie?

19 A Yes.

20 Q You do that rather easily, don't you?

21 A No.

22 Q Do you remember the next question:

23 "Q Miss Ortiz, were you ever present -- let me
24 again remind you that you are under oath, Miss Ortiz.
25 That failure to tell the truth in this grand jury while

1 evening?

2 A Yes. I wanted to take her to the doctor to see if
3 anything other than what she said had happened.
4

5 Q Do you recall, now that your mind has been refreshed
6 as to the incident -- do you recall the words his wife used
7 to describe him as Junior left the house?

8 A He left the house?

9 Q Do you remember Junior leaving the house that day,
10 after he was accused, very upset and very angry on the fact
11 that he was accused?

12 A He was upset, but you did not accuse him. No one
13 accused him.

14 Q Do you remember his brother being accused?

15 A Yes.

16 Q Do you remember me telling him exactly what your
17 daughter had said?

18 A Yes.

19 Q Okay. Do you remember immediately after that there
20 was a fight?

21 A Yes.

22 Q Isn't it a fact that there was a very heavy, very
23 physical fight that took place?

24 A Yes. Junior was castigating John Alicea for what
25 he had done.

1 MP 6 Ortiz - cross

2 Q And immediately after that, Fruto was accused of a
3 very similar act on a child also; is that correct?

4 A That is incorrect.

5 Q That is incorrect? He was not accused?

6 A You did not accuse him.

7 Q Well, what exactly happened?

8 A You just related to him what my son had said.

9 Q You don't consider that accusing?

10 A Did you consider it accusing? You were just tell-
11 ing him in my presence.

12 Q If I would suggest to you that his wife, who was
13 present at this time, screamed out, "Pervert, pervert," to
14 Fruto, would that recollect your memory?

15 A Yes.

16 Q Do you remember her calling him a pervert?

17 A Yes.

18 Q And getting very upset as he left?

19 A Yes.

20 Q Do you also remember at that time me and Fruto no
21 longer having a friendship as close as it was before?

22 A With whom?

23 Q With me and Fruto.

24 A On the contrary, you tried to reassure Junior that
25 there was nothing to worry about. You calmed his wife down

rp6

1
2 THE COURT: Well, of course, you have the right.
3 to show that the witness has a motive to testify falsely
4 against you and in that respect I think you have succeeded.
5 In fact, I think on her direct examination it was brought
6 out that you had left the house before the baby was born and
7 did not come back. That alone would be sufficient to
8 suggest to the jury she may have a motive to testify falsely.

9 Now, the problem we face now is that you are
10 going on and on and on with this, the point having been
11 sufficiently made through her own testimony thus far on
12 direct examination and through your cross-examination.

13 Although the testimony you are about to elicit
14 is relevant to that point, the Court is going to exclude
15 any further testimony along these lines pursuant to the
16 provisions of Rule 403 of the Federal Rules of Evidence
17 on the ground that to go further into these matters, that
18 is, your personal relationship with the witness to show
19 that she had a motive to lie, would simply waste the time
20 of the Court and the jury.

21 The point has been more than sufficiently made,
22 and I will not hear any lawyer on the issue.

23 All right, let us go into the courtroom.

24 MR. JAMES SIMS: May I say one thing?

25 THE COURT: Yes.

rp3

Ortiz-cross

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A They are names of people.

Q In which way did these people have dealings with me, do you know?

A Well, I already said about Lorraine.

Q How about the others?

A I mentioned Rosa. Frankie and Beverly had told me that you were seeing her also.

Q That didn't make you mad?

A Oh, yes.

Q So you were mad at me?

A When I heard about this, yes.

Q But you weren't mad based on the fact I wasn't supporting the child, is that correct?

A This was not at the time that I had the baby, no.

Q Were you upset with the fact that I did not support the baby?

A It upset me, yes.

Q Isn't it an admission of yours that the baby is not mine based on the fact that you did not pursue me with legal matters to provide support of that child?

A I don't understand that.

Q You didn't take me to court, is that correct?

A No, I didn't.

rp4

Ortiz-cross

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q For child support?

A No.

Q Wasn't this your admission that the child was not mine?

A Hardly.

Q Would you explain to the Court what I went through leading up into an arrest when I first met you?

A What you went through?

Q With respect to Pilo Juan Soto.

A Yes.

THE COURT: Does this have to do with the charges in this case, Mr. Sims, or an arrest in connection with this case?

MR. JAMES SIMS: A very similar pattern of an occurrence that took place that was very similar to this one where her prior boy friend --

THE COURT: This is something she testified to on direct examination?

MR. RICHMAN: On cross, your Honor.

THE COURT: All right. You want her to tell the circumstances of that arrest of you in that connection?

MR. JAMES SIMS: Yes.

THE COURT: Do you understand the question?

THE WITNESS: Yes.

rp8

me what I should say December 12 -- December 17, rather -- out of the two choices you felt better that I should just lie to whatever questions or lie to questions that would involve me; just say yes to my name and things like that.

Q Didn't you testify in this courtroom yesterday that I had told you to tell the truth with a smile?

A I didn't say that here in this courtroom.

Q What courtroom did you say that in?

A What courtroom did I say that in?

Q Yes.

A I believe I told that to an agent, if I am not mistaken. That's in regard to that same night where you came over to your mother's apartment to talk to me concerning the subpoena and suggested, well, you know, tell the truth. Everyone else there laughed.

Q Isn't it a fact, Migdalia, when you asked me about it when my mother called me to the house on your birthday the first time you had been approached by an agent, I was called over to talk with you?

A Yes.

Q When I got to the house you were very concerned, very worried, very upset; is that correct?

A Yes.

Q Isn't it a fact you asked me, "Hey, man, what

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

You answered "Yes."

Next question:

"And to the best of your knowledge, what did James Sims mean when he told you to tell the truth?"

"A To lie."

Did I in fact tell you to tell the truth?

A You in fact told me to lie.

MR. GREENFIELD: Objection, your Honor.

I don't believe that was her testimony.

THE COURT: That was the question to

her.

Q So then this testimony here was not the truth, is that correct?

A That is the truth.

Q In this you answered "To lie." I told you to lie. Is that correct?

A Yes, you did.

Q But you also testified that I told you to tell the truth, laughing?

A Yes, you did.

Q I told you both?

A Yes.

Q I said "Lie, Mickey. Tell the truth, ha, ha, ha"?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Don't you know Fruto played cards also with us?

A With whom?

Q Me and Henry and other people.

A I have no knowledge of that.

Q Did we ever play cards?

A You and I?

Q Yes.

A Yes.

Q What kind of cards did we play?

A Big Whiz.

Q What other kind of cards?

A 500 Rummy.

MR. JAMES SIMS: I am sorry, your Honor, may I
have a moment with my attorney?

THE COURT: Yes.

(Pause.)

Q Isn't it a fact that Mr. Henry brought you \$75 to
the house for a card game which he owed me from playing and
you in fact kept that money?

A You had him come -- well, to that, it is not a
fact.

Q Did you testify yesterday that I burned a news
truck?

A I testified that you had spoken of -- I don't

1
2 their lawyers were made aware that I had testified.

3 MR. THAU: I object to this "they" and "the
4 defendants."

5 THE COURT: I didn't get that.

6 MR. THAU: I object to all this encompassing
7 "they" and "the defendants" in the plural because my client
8 is a defendant here. There is no doubt but that my client
9 did not either commit the threat to the witness or threaten
10 this witness, so she couldn't be possibly referring to my
11 client when complaining of her fears to Mr. Feinberg.
12 I don't think this all-inclusive term should be used and
13 there should be a limiting instruction given to the jury
14 or to the witness when she is expressing herself.

15 MR. HAGEN: On behalf of John Sims, he is not
16 mentioned in the 30th count of the indictment and he has not
17 been mentioned in any way whatsoever, shape or form of
18 threats, and I renew my application --

19 THE COURT: Just a minute --

20 MR. HAGEN: -- to sever Sims from the case.

21 THE COURT: Just a minute. When you say
22 in your statement "they," to whom are you referring when
23 you say you were afraid of the defendants? Which of the
24 defendants were you talking about?

25 THE WITNESS: Frank, James and Bob.

1
2 contacted very often.

3 Q What about government agents?

4 A I have called Agent Markowski. He was the person
5 I was to call, either him or Feinberg.

6 Q How many times have you contacted Mr. Markowski?

7 A About ten times, 10 or 12 times.

8 Q Do you ever have contact with Mr. Feinberg from
9 the time you testified in the grand jury in January?

10 A Once after that.

11 Q When did you arrange to have this contact with
12 the United States Attorney's Office?

13 A Some time in February, I believe, February or
14 March.

15 Q Who was that?

16 A Excuse me?

17 Q Who was the United States Attorney you talked
18 to?

19 A Mr. Feinberg.

20 Q When is the next time you talked to the United
21 States Attorney's Office?

22 A Not until September of this year.

23 Q From February until September you had no contact
24 with the United States Attorney's Office?

25 A Yes.

1 rpl

2 (Jury present.)

3 M I G D A L I A O R T I Z, resumed.

4 THE COURT: Are you ready to proceed, Mr. Richman?

5 MR. RICHMAN: I am, your Honor.

6 RECROSS EXAMINATION CONTINUED

7 BY MR. RICHMAN:

8 Q Miss Ortiz, can you tell us now after you counted
9 how many times did you lie before the grand jury?

10 A 11 times.

11 Q 11 times?

12 A Yes.

13 Q Can we count together?

14 A That is sufficient.

15 MR. RICHMAN: Your Honor, I will now impeach her,
16 if I can, with other times.

17 THE COURT: Pardon me?

18 MR. RICHMAN: If I might, your Honor.

19 Q I direct your attention to page 6 which you have
20 before you.

21 Before I ask you a question, were you ever
22 afraid to be implicated in this bombing case?

23 A I never really thought I would be implicated.

24 Q You never thought that? Thank you.

25 Now, I direct your attention to line 22 of your

1 rp3

Ortiz-recross

2 THE COURT: What you want to do now is show that
3 she miscounted, that it is 12 instead of 11?

4 MR. RICHMAN: Not 12; 15.

5 THE COURT: Does the government want to concede
6 it is 15 times?

7 MR. GARNETT: Your Honor --

8 MR. RICHMAN: I will show it to you, I have them
9 numbered.

10 MR. GARNETT: For the sake of continuing argument
11 on this issue, the government will be prepared to concede
12 that it is some number between 12 and 15, if that satisfies
13 Mr. Richman.

14 THE COURT: Let us move on.

15 Q So it is between 12 and 15 times, correct?

16 THE COURT: Well, the government conceded that.
17 Why are you going over that?

18 Q After you testified before the first grand jury
19 Mr. Feinberg had spoken with you and said you had lied and
20 you were facing time or facing possibly perjury charges, did
21 he not?

22 A He said that if I realized that I could be
23 charged with perjury.

24 Q When that happened did you get that sinking
25 feeling in your stomach?

1
2 Q This is the one where you were telling the
3 truth, now remember that. January 3.

4 "Q On or about September 19, 1973, did you and
5 James Sims again go to a site in a car belonging to James
6 Sims?

7 "A Yes."

8 Are you lying now, too?

9 MR. GARNETT: That is for the jury to determine
10 whether she is telling the truth. That is a question for
11 the jury.

12 MR. RICHMAN: It is a question of fact. She is
13 lying in the second grand jury as well as the first.

14 THE COURT: You can ask her whether she is
15 telling the same or making the same statement she made
16 there. Is that contrary to her testimony here?

17 MR. RICHMAN: This is exactly what she testified
18 this morning and how she is saying she never said it.

19 I don't want to belabor the point.

20 THE COURT: What is it you want to ask her now?

21 MR. RICHMAN: I will ask her again --

22 THE COURT: No, she said -- you read the question
23 to her?

24 MR. RICHMAN: Yes.

25 THE COURT: The question you should put to her

rp

Ortiz-recross

1796

1 is, "Were you asked that question and did you give that
2 answer?"

3 Q Were you asked that question and did you give
4 that answer?

5 A If that is what it says there, yes.

6 Q But it is not the truth?

7 A I must not have noticed the date he mentioned.

8 Q So you just answered anything that the United
9 States Attorney asked you, you said yes?

10 A I tried to answer the truth as best I could
11 remember it then.

12 Q But you didn't remember the date?

13 A On that date I did not go to a bomb site.

14 Q Thank you. That answer is incorrect?

15 A Yes.

16 Q Unbeknownst to you, you also misstated even to
17 the second grand jury, your answers?

18 A Excuse me?

19 Q You lied?

20 MR. GARNETT: Your Honor, I object, that was just
21 asked and answered, and he is asking it again.

22 MR. RICHMAN: If it is not the truth, it must be
23 a lie.

24 THE COURT: Ask her. She said that she may not
25

rp

Ortiz-recross

1797

1 have remembered the date. That was her testimony. Now you
2 want to ask her what?

3
4 MR. RICHMAN: If she is lying, that is all I
5 want to ask her.

6 THE COURT: You asked her that. Read the
7 record.

8 (Record read.)

9 Q Now, when the government was asking you ques-
10 tions they were not just trying to get you to say something
11 they already knew, were they? They were looking for new
12 information, weren't they, if you know?

13 MR. GARNETT: I object, she doesn't know what
14 the government was trying to do.

15 THE COURT: No, you can't ask her what they
16 had in mind or intended.

17 MR. RICHMAN: They may have conveyed some message.

18 Q Did the prosecutor, Mr. Feinberg, or Mr.
19 Markowski ever tell you that "We know all the answers al-
20 ready, we just want you to say it"?

21 A No, he told me to tell them what I knew.

22 Q In other words, they were probably saying, "Are
23 you telling us the Black & Puerto Rican Coalition were
24 involved in all these things?"

25 A I told them what I knew.

mpa

Ortiz-recross

1817

Q Was there the name of a case on this document?

A I don't recall that.

Q You don't recall. Was there the name of an assistant United States attorney?

A I believe Feinberg's name was on it.

Q Do you recall if his phone number was on the bottom or on these documents?

A I don't recall, no.

Q And you did not call Mr. Feinberg?

A Well, I did call Mr. Feinberg.

Q Prior to your going to the grand jury?

A Yes. It was scheduled for the day before, and I called to tell him that I couldn't come that day, and so he said, well, come the next day. It wasn't originally set for the 27th.

Q Did he at that time ask you if you were coming down with counsel on the telephone conversation?

A On the phone? I don't recall.

Q Did he object strongly to your coming on the day after the return date of the service?

A No. He just -- he said, "Be sure to be here."

Q Do you remember what time it was?

rp8

Ortiz-recross

1
2 A Once he came with his family.

3 Q Most of the time?

4 A Once.

5 Q Did he come by himself, without his family?

6 A Well, it was very dangerous for him to bring the
7 family.

8 MR. THAU: I object to that as not responsive.

9 Q Did he come by himself, without his family, to
10 visit you?

11 A He came once with his family and the other times
12 he came alone.

13 Q You went in the car with him, is that true?

14 A Yes.

15 Q You had conversations with him, is that true?

16 A Yes.

17 Q You discussed this case, is that true?

18 A No, we did not discuss the incidents.

19 Q You never discussed this case with Mr. Alicea?

20 A When?

21 Q In the car.

22 A He would ask me how was I feeling.

23 Q The question was, did you ever discuss the case
24 with him in the car?

25 A Not the case, but the case in the sense of at

mpa2

1 we see we are talking about this case, in which an in-
2 dictment already had been handed down at the time this
3 testimony was taken, because the indictment, which
4 involves all the parties here before us now, came down
5 on December 11, 1974. Miss Ortiz is testifying first
6 December 27, '74 and subsequently on January 3, '75.
7 The issues before the court then as now are the very
8 same charges that we are speaking about, which are on
9 trial here before us. So it seems that there was
10 no truly investigative purposes --

11 THE COURT: Let's take the purposes one
12 at a time. What was the first purpose of calling
13 her down?
14

15 MR. RICHMAN: The grand jury is investi-
16 gating violations of law, including conspiracy, violation
17 of the Explosives Act and the Hobbs Act. And every
18 question that followed concerned incidents already men-
19 tioned in the indictment. Therefore, it would appear
20 clearly from the questions that no other crimes were
21 contemplated other than those crimes already charged.

22 THE COURT: They didn't ask her about any
23 other persons.

24 MR. RICHMAN: Not a single other person,
25 not a single other act other than those acts already

1 mpa

2 silent. Mr. Feinberg continued, pressing her in one
3 manner, shape or form or another. She finally said
4 in answer to a question ayn then another answer and then
5 another answer. She claims now those answers were
6 false.

7 In addition, she was never advised that if
8 she can't afford a lawyer, she can get a lawyer free
9 of charge, which would be provided for her. This
10 has never been in these minutes.

11 Now, the argument may be made, which your
12 Honor raised before, that I am not in a position to
13 avail myself, since this defendant chose to waive her
14 rights and thereby I am precluded. Well, I do have
15 standing, I submit, on various other grounds.

16 Your Honor, testimony of this witness
17 came out directly, the first time it came out, rather
18 self-assured and rather confident. This is a person
19 who has been in the clutches of the government for some
20 period of time. I don't doubt the good wishes or
21 the good intentions of the three prosecutors here and
22 I don't want to ever make a case that I think that they
23 are doing anything wrong, but I have been in a
24 substantial number of cases, your Honor, where I have
25 seen the pressures that can be brought through agents,

1
2 through others, and I submit that those pressures have
3 now turned this into a government, without question.
4 Everything that led up to her being made into a govern-
5 ment witness has been illegal.

6 One, a representation that this was a
7 duly authorized grand jury, which I contend it wasn't;
8 a representation that she was advised of her rights,
9 which she was not. A girl who originally took the
10 Fifth Amendment was made to make a false answer,
11 pressured, literally pressured, and it can be seen in
12 this testimony.

13 THE COURT: All right.

14 Now, I am going to give other defense
15 lawyers a chance to add anything that Mr. Richman hasn't
16 said. I don't want to hear any lawyer repeat any
17 point Mr. Richman has made, because this motion is
18 made on behalf of all defendants, all defendants are
19 included, and, as I said when the trial began, any
20 motion or objection made on behalf of one defendant is
21 deemed made on behalf of all, and you may add something
22 but you may not repeat an argument already made.

23 Mr. Lewis, do you have something to add?

24 MR. RICHMAN: Your Honor, there's something
25 on the law which I want to call to your attention.

rp4

92a

ruling made, there must always be a case on point?

THE COURT: That would help. It certainly would in a big case like this, to dismiss with no law. That certainly would be novel, I will tell you that.

MR. HAGEN: This is not a big case, my client is not even mentioned.

THE COURT: Certainly it would be novel for a judge to dismiss a case like this based on no law.

MR. HAGEN: I haven't asked for a dismissal, I asked for a suppression.

MR. ROSENBAUM: Your Honor, it is difficult to go after so many learned arguments. However, there is one point I would like to make. This is with respect to the government's state of mind during and right after the first grand jury presentation.

If my recollection of the testimony is correct, when Miss Ortiz finished testifying before the December 27 grand jury, she was handed a subpoena to appear again for the January 3rd grand jury. So apparently the government had known in advance that she was going to perjure herself, and this is a further showing of the government's purpose here. I think that should be considered where your Honor considers whether to exclude this evidence or not.

THE COURT: All right.

mpa Hochberger-direct 1970

Mr. Sims, partially -- he wasn't there the full time;
Mr. Cuadrado. As I recall he wasn't there the
full time. Myself, a Mr. Melvin Bye, president of
Quest Construction Corp., Miss Madelaine Guiniere,
vice president of Quest Construction Corp.

Q Now, will you please tell us what was said
at this meeting and who said it?

A Mr. Munoz indicated that the community was
no longer supporting East Electric, and that the community
wasn't supporting a Mr. Alex Hirsch, who was president
or owner of C & D Electric, either. He indicated
that the community --

MR. GREENFIELD: Your Honor, I can't
see from here, but I would like to know, is the wit-
ness reading the answers? I see his head dipping.

THE WITNESS: I am referring to my notes.

MR. GREENFIELD: Your Honor, could the
record reflect every time the witness refers to his
notes. I think the U. S. attorney is in the best
position to see.

MR. HARRIS: Thank you, Mr. Greenfield, but
I can't see myself.

Q Mr. Hochberger, let's digress a moment.

Did you have a practice with regard to keep-

1 rp2

Hochberger-direct

2 of any guard service specifically, at the time of your meeting
3 on May 22?

4 A I don't recall.

5 Q Calling your attention to June 5, 1973, did you
6 have a meeting in your offices in Paramus, New Jersey?

7 A Yes.

8 Q Can you tell us the circumstances which led up
9 to your having this meeting?

10 A At that time we had awarded an electrical sub-
11 contract and we had received some letters from Mr. Munoz,
12 who I know gave us copies of these letters during my meeting
13 of May 22. These are copies of letters that he had sent to
14 certain U.D.C. representatives indicating that he had a
15 meeting with Sovereign Construction and they were cooperating
16 in using minority subcontractors or employees on the site.

17 So at this June meeting that you refer to Mr.
18 Munoz would not give his name, and when I asked him what
19 his name was he just said "Call me Sonny Bruno."

20 They appeared in my office at 4.00 p.m. and
21 stayed about an hour and a half, and apparently Mr. Munoz
22 was being pointed out by the other members of the community
23 as having given Sovereign and Quest some favors for these
24 letters and he wanted me to tell them that he didn't receive
25 any type of remuneration, consideration or payoff from me

jpa

Hochberger-cross

2093

1 that date?

2 A What about those events?

3 Q They must have worked themselves out into
4 a harmonious relationship, isn't that right?

5 A At that point?

6 Q Yes.

7 A I say that the letter speaks for itself.

8 Q By the way, did Mr. Munoz ever threaten to
9 bomb any of your sites?

10 A No.

11 Q Did you ever see him bomb any of your
12 sites?

13 A No.

14 Q Did he ever tell you that he had bombed any
15 of your sites?

16 A No.

17 Q Did he ever try to get anything from you
18 for personal gain at all? Did he ever ask you for
19 any money?

20 A No.

21 Q So at all times Mr. Munoz conducted himself
22 aggressively, I will state, as a leader in a civil
23 rights movement, isn't that a fact?

24 A A leader in the civil rights movement?

jpa

Hochberger-cross

2094

Q Yes, for blacks and Puerto Ricans.

A I would say that he was a militant man.

Q Thank you. In other words -- withdrawn.

No other words. You said it enough.

MR. RICHMAN: I have no further ques-

tions.

THE COURT: All right, Mr. Lewis.

MR. LEWIS: Mr. Sims asks that he may

conduct his examination.

CROSS EXAMINATION

BY DEFENDANT JAMES SIMS:

Q Good morning, Mr. Hochberger. Have we ever met before?

A Yes.

Q You recognize me as being Jimmy Sims?

A Yes.

Q How many times would you say we have approximately met, Mr. Hochberger?

A A few times.

Q A few times. At any of those times did I threaten you personally?

A No.

Q Did I ever make you feel that there was any type of personal threat any other way?

jpa

Hochberger-cross

2105

1 a Friday and the bomb at our office building in Paramus
2 was on Saturday, the 30th.

3
4 Q When I left that meeting, were you under
5 the impression that I was very angry at you?

6 A At me personally?

7 Q Yes, sir.

8 A No.

9 Q Isn't it a fact that we had a pretty nice
10 conversation that lasted about two hours down there
11 where we talked and sat around in a circle, very
12 friendlylike.

13 A I don't know if you would call it friendly.
14 It was businesslike.

15 Q Okay, businesslike, that's a good word.

16 But you felt no threat, is that correct?

17 A No.

18 Q I would like to ask you a question. In
19 reference to the building in Paramus, is it a one-story
20 brown building?

21 A No.

22 Q What kind of building is it, sir?

23 A It's a four-story white brick building.

24 Q Not a one-story brown building?

25 A No.

rp5

Hochberger-cross

1 Q Mr. Hochberger, this is again a letter between
2 you and Mr. Frankel. Will you read it for us, please?
3

4 (Defendant James Sims Exhibit B read.)

5 Q Thank you. I would like to show you the sketch
6 that was offered into evidence.

7 Is that the sketch that you made a copy of, sir?

8 A Yes.

9 Q Do I fit any descriptions that was given to you
10 by the Police Department?

11 MR. HARRIS: Objection. That is for the jury,
12 your Honor.

13 THE COURT: Overruled.

14 A No.

15 Q I don't fit those descriptions? Thank you.

16 But can you tell exactly who told you that these
17 were the people that were bombing your sites? Exactly what
18 person told you that the sketches were of the people that were
19 bombing your sites?

20 A The Sergeant and the Special Agent.

21 Q Government agent?

22 A That is what the memorandum says.

23 Q They told you these people had been identified?

24 A Identified or suspected of being responsible for.

25 Q Suspected and identified, is that what you put

jpa

Hochberger-cross

2144

THE COURT: The question is whether they referred to them as white; do you recall that?

THE WITNESS: Yes, they did.

THE COURT: Let's proceed then. That's the only question that was standing.

Q Do you have knowledge, sir, of what I am charged with in this case?

A No, I am not.

Q You have no knowledge of what you are here for testifying in reference to me and in reference to the defendants?

A I imagine it is with regard to bombings and arson but I am just speculating on that. I've read the newspapers ahead of time. I saw some articles.

Q Did you ever believe that the Black and Puerto Rican Coalition was responsible for you being bombed?

A That it was possible?

Q Was responsible for your site getting bombed.

A I had no proof.

Q Did you believe the government when they came in and said it was two white guys?

A The two people I told you about before that visited me said that these were the photographs of

mpa15

Hochberger-recross

2237

and Puerto Rican Coalition was on or about the 9th of May, I believe, is that correct?

A Yes.

Q And I believe Mr. Harris just brought into evidence that you already had a bombing on March 28th, some month and a half prior to the meeting, isn't that right?

A I don't know if Mr. Harris said that.

Q Well, it's in the evidence that just came in.

THE COURT: He is saying, is it in one of these documents?

MR. RICHMAN: Yes, your Honor, on the very first one.

THE COURT: Is that right, Mr. Harris?

MR. HARRIS: Your Honor, there is a report that there was a bombing resulting in \$2000 worth of damage, your Honor, March 28th.

MR. RICHMAN: March 28th, your Honor.

THE COURT: All right. That's what I wanted to know. I haven't seen the exhibit.

BY MR. RICHMAN:

Q So a month and a half before you had any contact at all with the Black and Puerto Rican

Coalition somebody bombed your site?

MR. HARRIS: Your Honor, I object.

The first question was after he had contact with Mr. Munoz and now the Black and Puerto Rican Coalition.

Q When was the first time that you met Mr. Munoz?

A May 9, 1973.

102a

rp6

Hochberger-recross

monious relationships, is that right? I read it to you yesterday. Do you recall?

A I don't recall it verbatim, the reply made by Mr. Frankel. I said that it speaks for itself.

Q Fine, but it made reference to the harmonious relations on October 16, 1973?

MR. HARRIS: Your Honor, it is in evidence.

MR. RICHMAN: Yes, it is in evidence.

Q On October 16 your relationships --

THE COURT: This again was not brought out on redirect examination.

MR. RICHMAN: No, your Honor. Only allegations made to alleged contracts prior to October 16. I am just trying to establish that notwithstanding these alleged facts, this relationship was allegedly harmonious.

THE COURT: That is not within the scope of redirect examination.

MR. RICHMAN: Very well.

Q There came a time, sir, did there not, that you reported these pipe bombing incidents?

A That I reported?

Q Someone in your company?

A Yes.

Q You are Samuel Hochberger, aren't you?

1 rp7

Hochberger-recross

2 A Yes, sir.

3 Q Did you report the pipe bombing incident in
4 Paramus, New Jersey, June 30, 1973?

5 A Yes.

6 Q Did you tell the police that you didn't know who
7 placed the pipe bomb?

8 A Yes.

9 Q That was unknown to you?

10 A At that time.

11 Q You didn't connect it with anybody else?

12 A Did I connect it with somebody else? I had my
13 suspicions.

14 Q The police came and told you that was two white
15 men, didn't they?

16 A The police gave me a Xerox copy of a photograph,
17 the bottom of which was marked "W/Male" and the age and so
18 on, and I copied that more or less verbatim and distributed
19 those photographs or that one photograph with a memo to my
20 various people to assist the police in apprehending the
21 suspect.

22 Q And it mentioned a blond male 6 foot, slim,
23 to 30?

24 A I would have to read that.

25 MR. HARRIS: Your Honor, that is beyond the

1 rp9

Hochberger-recross

2 this other group, that white group?

3 A What other white group?

4 Q The one we talked about yesterday on cross-
5 examination, the alleged sponsors for this program.

6 A The Melrose community action group?

7 Q Yes.

8 A I believe we did.

9 Q You had liaison?

10 A Yes.

11 Q You hired people from the community and paid
12 them?

13 A We hired people? I am sorry, I didn't hear the
14 question.

15 Q You hired people from this particular group and
16 paid them as liaison?

17 A We hired, I think, a person from the community
18 there as liaison to monitor the import of personnel from the
19 community into the site.

20 Q Fine. And that group or that liaison person
21 have anything to do with the Black & Puerto Rican Coalition
22 or any man here on this trial?

23 A I really don't know.

24 Q You don't know?

25 A I don't know.

mpa7

Cooke-direct

2294

1 confrontations at Yankee Stadium. He made -- very
2 prominently displayed his firearm. He mentioned he
3 had permission to carry it, in that he was in such a --
4

5 Q When you say --

6 A -- in his sensitive area, but he didn't in
7 any way extract it. He just let us know he had it.

8 Q He had what?

9 A A pistol or a gun or a revolver. He had
10 a firearm. I didn't see it openly. I saw it in
11 its holster on his body.

12 Q What did you do after that?

13 A In reference to the pistol or to our conver-
14 sation?

15 Q To your conversation.

16 A Well, it materializes very nicely. He
17 made his point. We had the assistant inspector, Peter
18 Kowalovich, come up, and Mr. Munoz paid attention to
19 him, or Peter paid his attention to Mr. Munoz, and they
20 got together and went to the demolition office. But
21 in the meantime we were told, Peter told us to cease
22 and desist, secure the building and move off the
23 site.

24 Q Now, Mr. Cooke, the device you found, that
25 Mr. Schmitt gave you, you said it was smaller than

mpa8

Cooke-direct-cross

2295

Government's Exhibit No. 1, is that correct?

A To determine the size is difficult. It seems it was smaller, yes.

Q And did it have these caps on the end?

A Two caps, on either end, one with a whole in it.

MR. GARNETT: I have no further questions at this time, your Honor.

CROSS EXAMINATION

BY MR. RICHMAN:

Q Mr. Cooke. It is Mr. Cooke, isn't it?

A Yes, sir.

Q You reported the incident with reference to this pipe bomb, did you not, when you were interviewed by Special Agent Reichen, isn't it a fact.

A You will have to help me out there. You will have to establish the time there, where it was and who he was.

Q I can't do that. I don't know.

Now, you said you met Mr. Munoz a year later. That would put us around May of 1974.

A Yes.

Q And at the Tiffany Avenue --

A Tiffany Street and 161st Street.

1

2

Q Tiffany Street and 161st?

3

A Yes.

4

Q And you were about to demolish --

5

A We were in the process of demolition.

6

Q And Mr. Munoz arrived with a group of in-

7

dividuals saying, "You can't do that because this is

8

designated as a rehab"?

9

A The group was there prior to Mr. Munoz'

10

appearance and prior to my appearance, but the work

11

had stopped.

12

Q They were picketing?

13

A They weren't picketing. They were in

14

a mass, conveying their views.

15

Q Can you tell us and can you tell the jury

16

what a "rehab" is?

17

A A rehab is a renovated building, it's

18

a building badly damaged, just short of unsafe, and it

19

is a process of rebuilding to a state where it is

20

habitable again.

21

Q Mr. Munoz then showed upon the scene after

22

a group of individuals were already there?

23

A To my knowledge, yes.

24

Q And he was firm with you?

25

A I would say so, yes.

1

2

Q Was he threatening?

3

A No.

4

Q I mean, you said he mentioned that he had

5

a gun. Did he tell you that he had permission by the

6

City of New York --

7

A Oh, definitely.

8

Q And he never tried to take it out and threaten

9

you in any way, did he?

10

A No, he did not.

11

Q In other words, he was most courteous at

12

all times?

13

A I would subtract that. He was firm.

14

Q He was firm but not threatening?

15

A Not threatening.

16

Q Was he abusive?

17

A No.

18

Q He was firm but not abusive?

19

A I would say so.

20

Q And then after he spoke with you, he went

21

to speak with your boss, Mr. Peter --

22

A Not my boss. He went with the assistant chief

23

inspector.

24

Q And spoke with him?

25

A Yes.

MR. HAGEN: No questions, your Honor.

CROSS EXAMINATION

BY MR. ROSENBAUM:

Q Mr. Cooke, you just testified that you were shown certain pictures.

A Yes.

Q Where were you shown these pictures?

A At Mr. Garnett's office or room.

Q What was the size of these pictures?

A Well, that's hard to determine. I would say 3 x 4s.

Q 3 x 4s. And how many of them were placed in front of you at one time?

A One.

Q One at a time. And when you were asked about these pictures, did Mr. Garnett say, "Do you know this gentleman?" or did he name him?

A No. No name was mentioned. He asked -- the pictures were presented to me. He said, "Do you know this person? Is he familiar?" And I replied, "Negative; negative; positive," upon identifying the picture.

Q And he kept showing you these pictures one at a time with the same question?

mbal

Cannizzaro-direct

2372

1 mbal
2 A He related what he had done on other pro-
3 jects throughout the city.

4 Q What did he say?

5 A That he had vandalized them, he had hit them,
6 he had brought the troops to them, that he had burned,
7 terrorized. I am sure I am not quoting accurately
8 but paraphrasing.

9 Q This is what he told you, generally speaking,
10 is that right?

11 A I am sorry. I didn't hear.

12 Q This is what he told you, generally speaking, on
13 these occasions?

14 A Yes.

15 Q With respect to the Metro North Community
16 Group, which existed on the site, did you have a conver-
17 sations with Mr. Sims about the Metro North Community
18 Group?

19 A Yes.

20 Q Do you know when that was, approximately?

21 A I believe it was in January of 1974.

22 Q What did he say to you and what did you say
23 to him on that occasion?

24 A I suggested at that time, as I had before,
25 that all hiring of community people will be channeled

mba~

Cannizzaro-direct

2373

through the Metro North Association according to our agreement with the association and also with the Urban Development Corporation.

I attempted to get Mr. Sims to meet with Mr. Suarez, who was the head of the Metro North Association for quite a period of time. During that period of time Mr. Sims said that he felt that Mr. Suarez was not doing an adequate job of getting minorities employed at the site.

In any event, the community, as he described community, were people belonging to his organization rather than people coming from the Metro North area.

Q Did he say he'd meet with Suarez?

A Yes, he did meet with Suarez, I believe in February of 1974.

MR. LITTLEFIELD: I have no further questions.

MR. RICHMAN: I will be brief.

CROSS EXAMINATION

BY MR. RICHMAN:

Q Mr. Cannizzaro, do you know this man?

A Yes, sir.

Q You don't know him? You know him?

1

2

A Yes, sir.

3

Q Can you tell us who he is?

4

A Mr. Munoz.

5

Q Was he ever at this demonstration you dis-

6

cussed?

7

A No, he was not.

8

Q Did he ever threaten you?

9

A No, sir.

10

Q Have you had occasion to speak with him on

11

more than one occasion?

12

A I attended a meeting with Mr. Munoz at the

13

Titan Group offices, in Paramus, New Jersey, and I believe

14

that was the only occasion when I ever met Mr. Munoz.

15

Q He did not threaten you?

16

A No, sir.

17

Q He did not do anything that frightened you?

18

A No.

19

Q Thank you. Just a moment more. In fact,

20

about two other subjects briefly.

21

Just to talk about this demonstration, you

22

said that there were about 20 people on the site.

23

A I believe I said 30 people.

24

Q Thirty people. You had 200 construction

25

workers, is that right?

A Yes, sir.

rp2

Q No, that month. Directing your attention to the 20th of November.

A Yes, I believe there was a demonstration by the Fight-Back Group.

Q What is the name of that group?

A Fight-Back.

Q Fight-Back?

A Yes.

Q Was the name Harlem Fight-Back Group?

A I believe so.

Q Have anything to do with these people here?

A I don't know.

Q There was a different demonstration by a different group to the best of your knowledge?

A Yes, sir.

Q What happened then, did they stop the site?

A I wasn't present during that demonstration.

Q What was reported to you?

A They entered the site --

Q And stopped the site?

A No. The work was not stopped, as far as I

wnow.

Q What was the reason they were at the site?

A Again, the claim was made that not sufficient

1 rp3

Cannizzaro-cross

2 number of minorities were employed at the site.

3 Q An entirely different group making the same
4 claim, is that right?

5 A Yes.

6 Q At the time when you were working there what
7 was your job title?

8 A Project superintendent.

9 Q Project superintendent?

10 A Yes, sir.

11 Q Were you working for Sovereign or Quest?

12 A Sovereign.

13 Q Is a project superintendent higher than a vice-
14 president?

15 A Not normally.

16 Q Not normally, right? And Paul Johnson was vice-
17 president of Quest and he answered to you, right?

18 A Answered to me in matters of construction only.
19 Those were my orders.

20 Q In other words, the Black vice-president of
21 Quest answered to you, the project supervisor?

22 A That is not what I said, sir.

23 Q Yes or no.

24 A It is not what I said. My expertise was con-
25 struction and Mr. Johnson had less expertise in the field

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A You had discussions pertaining to riots, demonstrations and harassment of my project.

Q Riots? Was there ever a riot on this site, sir?

A That would be an argumentative thing, as to whether the incident of November 8th was a riot. Yes, I might define it as a riot. Others may not, but I would.

Q How many people went to the hospital based on that riot?

A Nobody went to the hospital.

Q How many people were arrested by the Police Department?

A I specifically requested that the police not come in, because based on your remarks to me I thought that would help cool the situation, so nobody was arrested.

Q Isn't it a fact that I mentioned to you that it is a peaceful demonstration, there is a lot of people here, and sometimes when police come in without the story, things -- it excites people? Isn't that what I said basically?

A You told me that your people didn't like police, and you told me that they might get excited if

mpa2

Bonnano-cross

1
2 THE COURT: Well, let's try to address
3 the witness by their names and have them address you
4 by your surname.

5 DEFENDANT JAMES SIMS: Yes, your Honor.

6 Q Mr. Bonnano, isn't it a fact that at no time
7 did I ever threaten you personally?

8 A You never threatened me, no.

9 Q And isn't it a fact that the demonstra-
10 tions, although many people were present, were peace-
11 ful demonstrations?

12 A Thankfully, your Honor.

13 Q And the Coalition basically came on the
14 site seeking employment, is this correct, sir?

15 A Yes.

16 Q And on occasions during the demonstration
17 a few of us would enter your shanty at times and we'd
18 sit down and talk, is this correct, sir?

19 A Yes.

20 Q You never felt personally threatened, did
21 you?

22 A When you came on the job with just a few
23 of the Coalition and we spoke the way we are speaking
24 now, no. But when you came on the job with 200
25 people, I felt very uneasy. Very uneasy.

1

3

4

6

7

9

10

12

13

16

17

18

21

22

25

American club that was there with Louis Nargi and Bob
Masonry?

1 rp2

Bonanno-cross

2 Q Yes, demonstrated.

3 A There was another organization, but they did not
4 demonstrate.

5 Q What organization was that?

6 A Harlem Fight-Back.

7 Q They visited the site?

8 A Seven or eight times.

9 Q Seven or eight times? Would that be an equal
10 amount of time that the Black & Puerto Rican Coalition
11 visited the site?

12 A I would say you doubled that figure.

13 Q Approximately fourteen?

14 A Fifteen.

15 Q What did the Harlem Fight-Back complain about?

16 A They, too, would like to see if there was em-
17 ployment available for their people.

18 Q Did they tell you that they felt the site was
19 beneath the requirements or beneath -- did they have any
20 complaints about not having enough minority?

21 A Again, they could see the size of the site
22 during the same time frame and the people that were working
23 were very obvious to them. They did not complain.

24 Q Was it during the same time that we demon-
25 strated?

1 rp6

Bonanno-cross

2 Muratora that in a few days they would do some hiring, is
3 that correct?

4 A You got a commitment from Civetta.

5 Q After we got a commitment we left, we disbursed
6 with the commitment that two men would be hired in a few
7 days later, is that correct?

8 A That's right.

9 Q Two men were not hired, is that correct?

10 A That I don't know. A week later Civetta employed
11 two more people, minority personnel.

12 Q Isn't it a fact that prior to the second demon-
13 stration they never hired anyone but they had given a commit-
14 ment they did not live up to?

15 A This I don't know for a fact. They did employ
16 at that time I understood two of your people. The following
17 week the pile operation kind of eased off, one rig went off
18 the job and Civetta's total force was less.

19 Q But this was after the second demonstration?

20 A The first one. In between the first and
21 second.

22 Q You are right. But I did visit the site a
23 second time prior to the first and second demonstration,
24 is that correct, with a few people?

25 A Yes.

rp

Bonanno-cross

2603

1
2 A I would feel uneasy in the respect that the
3 concrete was not being placed.

4 Q By the way, do you feel uneasy testifying in
5 court today?

6 A A new experience always gives you a little con-
7 cern, but it ends right away.

8 Q But it is a less easy than if you were sitting
9 at home on your anniversary?

10 A Certainly.

11 MR. ROSENBAUM: Thank you very much.

12 BY MR. THAU:

13 Q Mr. Bonanno, you told Mr. Sims, did you not,
14 that when you first saw him and his companions you felt
15 uneasy and anxious until you had found out why they were
16 there. Did I hear you correctly?

17 A During the demonstration, yes, sir.

18 Q And that once you had found out why they were
19 there that anxiousness vanished?

20 A It vanished when we were able to conform to the
21 demands of whatever was required at that time.

22 Q The point is at first you were anxious --

23 THE COURT: Please do not repeat the witness's
24 testimony. He testified and move on.

25 MR. THAU: Surely.

1 mpa2 Amengual-direct

2 Roosevelt Drive and 100th Street?

3 A Between 100th and 102nd Street.

4 Q Now, after you submitted your bid, did you
5 thereafter find out the results of the bidding?

6 A Yes.

7 Q And was the contract awarded to a firm called
8 Public Improvements?

9 A It was.

10 Q Now, subsequent to the awarding of the
11 electrical subcontract to the Public Improvements
12 Corporation, was the electrical subcontract rebid?

13 A It was.

14 Q And was this at the direction of the Urban
15 Development Corporation?

16 A Yes.

17 Q And as a result of the rebid, were you in
18 fact awarded the contract?

19 A Yes. That's correct.

20 Q Now, approximately when were you awarded
21 the contract after the rebidding?

22 A I think -- I think it was some time in
23 August or in September. I'm not sure.

24 Q And what was the date, if you know, when the
25 contract was originally given out to the Public Improve-

1 mpa3 Amenqual-direct
2 ments Corporation?

3 A I'm not sure. I think it was maybe in
4 May or June.

5 MR. THAU: Pardon me. What years are
6 we talking about, Mr. Harris? '72 or '73?

7 MR. HARRIS: '73.

8 MR. THAU: Tyank you.

9 Q Now, calling your attention to approximately
10 May 9, 1973, did you have occasion to have a meeting
11 with James Sims and Carlos Cuadrado in your office?

12 A Yes. Yes.

13 Q And will you please tell the court and jury
14 the circumstances of that meeting? First --

15 A Well, they had come to my office and they
16 had asked me for some moneys.

17 Q Now, when you say "they," can you identify
18 specifically who was doing the talking?

19 A Mr. Sims.

20 Q And what did he say in asking you for
21 some moneys?

22 A Well, it was for the work that they were doing;
23 in other words, going to represent East Electric to UDC
24 and to Sovereign for the Metro North Project job.

25 Q Had you authorized Mr. Sims to do any work

1 mpa5 Amengual-direct

2 form of two \$500 checks?

3 A Well, I guess because --

4 THE COURT: Now, please don't tell us
5 what you guess. Tell us only what you know of your
6 own knowledge.

7 A Well, he wanted to cash them, I guess --
8 well, not I guess. He wanted to cash them. To go
9 across the street. There was a check cashing place.

10 THE COURT: Are you telling us what James
11 Sims told you?

12 THE WITNESS: No. He said -- James
13 Sims told me to make out two \$500 checks. Yes, that's
14 what he told me.

15 Q And do you recall whom these two checks were
16 made out to?

17 A That day I think it was made out to Carlos
18 Cuadrado.

19 Q And how did it happen that the checks were
20 made out to Carlos Cuadrado, if you know?

21 A Well, I was told to make them out that way.

22 MR. ROSENBAUM: Objection.

23 Q Tho told you?

24 A I think I was talking to Jimmy.

25 Q At this time I show what has been premarked

1 mpa6 Amengual-direct
2 as Government's Exhibits for identification 25 and 26
3 and ask you if you recognize them.

4 A Yes, I do.

5 Q What are they? .

6 A Two checks. \$500, as consultant fees.

7 Q Are these the checks that you issued to
8 Cuadrado and James Sims on or about May 9th?

9 A That's correct.

10 MR. HARRIS: Your Honor, I will show the
11 checks to the attorneys for the defendants.

12 (Pause.)

13 MR. LEWIS: Your Honor, I would object
14 on the ground that both checks are made out to Carlos
15 Cuadrado and endorsed by that gentleman, and James Sims'
16 name doesn't appear on either document.

17 THE COURT: Overruled.

18 MR. THAO: I would like to know what the
19 government intends to prove by that exhibit in that
20 I see them as irrelevant to this case.

21 THE COURT: Overruled.

22 MR. GREENFIELD: Your Honor, I would object
23 on the ground that it is totally unrelated to Eddie
24 Jackson.

25 THE COURT: Taken subject to connection as

1 mpa9 Amengual-direct

2 this is so, and he said, "Yes."

3 Q Did he express an opinion as to whether you
4 should pay them?

5 A He says yes, because they were working --
6 they were doing consultant fees or running around,
7 you know --

8 Q So it is your understanding that for this
9 \$1000 you paid out that Mr. Cuadrado and Mr. Sims
10 had made a trip to the UDC and one trip --

11 A Not one. Several trips.

12 Q Several trips to the UDC. And what else?

13 A And they had met several times with John
14 Frankel or Sam Hochberger from Sovereign.

15 Q Now, did there come a time after May 9th
16 when James Sims came to you again and requested more
17 money?

18 A Oh, huh -- yes. Yes.

19 Q Did you in fact pay him?

20 A I did.

21 Q I show you what has been prepared as
22 Government's Exhibits 27 and 28 for identification and --
23 27 and 28 -- ask you if you can identify them.

24 A They are mine.

25 Q These are the checks that you paid Mr. Sims

1 mpall Amengual-direct

2 of 27 and 28, May 30th, what consulting services did
3 James Sims perform for you?

4 A Well, he was, like I said -- he had gone
5 to UDC several times.

6 Q After that?

7 A After that.

8 Q After the first payment and before the second
9 payment?

10 MR. LEWIS: Your Honor, I object as a
11 leading question.

12 THE COURT: Overruled.

13 A I don't quite understand the question.

14 Q During the approximately three-week inter-
15 val between when you gave Mr. Sims and Mr. Cuadrado
16 checks the first time and the time when you gave Mr.
17 Sims those checks, Government's Exhibits 27 and 28,
18 what, if any, consulting services did Mr. Sims perform
19 for you?

20 A It was all part of the same thing. It
21 was still part of the consulting, because we were in
22 the process of reestimating the job for UDC, and I, you
23 know -- he was still working.

24 Q What did he say, specifically?

25 A He went to UDC, spoke to UDC, and he went to

1 mpa12

Amengual-direct

2 Sovereign.

3 Q And between the first checks and the second
4 checks, do you know how many times he went to UDC?

5 A I had no idea. I didn't really bother.
6 In other words, this was part of their consulting fees
7 and that was it.

8 Q Did you hire them as consultants?

9 A No. I went to Bob Munoz and I explained
10 to Bob Munoz that we had, you know, a problem, bidding
11 this job, and Bob Munoz assigned them to the job.

12 Q Did you have any understanding with Mr.
13 Munoz or with anyone else that you would have to pay
14 money for these services?

15 A No, I really didn't think I would have to
16 pay money for these services.

17 Q At the time that you were approached, either
18 on May 9th or May 30th, did you question Mr. Sims or
19 Mr. Cuadrado as to why you had to pay money?

20 A Well, they had told me that their time and
21 expenses that they had to incur weren't being picked
22 up by the Hunts Point Community Corporation, and that
23 they, you know, they would require some money because
24 of traveling expenses, time wasted, a lot of time
25 wasted, to try to get UDC and Sovereign to rebid the

(Jury not present.)

MR. HAGEN: Your Honor, I make an application to proceed without the presence of my client. I waive his presence at this time.

THE COURT: All right.

S A M U E L A M E N G U A L resumed.

MR. HARRIS: Your Honor, could the record now reflect that it is 10:40.

THE COURT: Yes.

(Jury present.)

DIRECT EXAMINATION CONTINUED

BY MR. HARRIS:

Q Mr. Amengual, do you recall yesterday when we finished, just before the court was adjourned for the day, you said that, in reference to the \$700 that you paid Jimmy Sims, you felt you were buying peace?

A That's correct.

Q Now, starting from that point, sir, you testified yesterday that Jimmy Sims came in and told you his car was broken down?

A That's correct.

Q And asked for \$700?

A Yes.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q And you stated that he told you it was ip-
state?

A Yes.

Q Now, at that point did you pay him the \$700
that he asked for?

A Well, I told him that after -- he made me
feel bad. I was annoyed. I was really upset about
the \$700. I told him, I says, "Hey, what do you think,
I am made out of money?"

Q Did you agree to pay it to him, however?

A Yes, I did.

Q Did you pay it to him on the spot?

A No, I didn't.

Q Now, after agreeing to pay it to him, did
a period of time elapse before you finally did pay it
to him?

A That's correct.

Q And during this period of time that elapsed
did you have occasion to speak for anyone on the phone
regarding this request?

A Well, I was trying to get a hold of Bob Munoz,
because what I told Jimmy, "See me tomorrow, some time
tomorrow, come on down and I'll see if I can do it."
I was trying to buy time so I could reach Bob and question

mpa3

Amengual-direct

1 him if it is true whether or not this guy's car was
2 damaged or whatnot, because he had told me not to
3 mention it to Bob, you see, or to anyone. So I thought
4 I was being taken, yes.

5 Q Did you in fact ever reach Bob?

6 A Yes.

7 Q And what did Mr. Munoz say to you?

8 A Well, Bob said, yes, his car had been --
9 was broken upstate, "And if you" -- if I wanted to give
10 him the money, which I had already given the money, you
11 know, it was up to me. But I had already given the
12 money because I couldn't reach Bob.

13 Q I show you what has been premarked as
14 Government's Exhibit 29 for identification and ask you
15 if you can identify it.

16 A Yes.

17 Q What is that, sir?

18 A \$700 to Jimmy Sims.

19 Q Is that the check with which you paid Jimmy
20 Sims the \$700 you have been testifying about?

21 A That's correct.

22 MR. HARRIS: Your Honor, at this time I
23 am showing to counsel and offering 29 for identification
24 into evidence.
25

1 salaries, we will have a liaison on the site," is
2 that correct?
3

4 A I said that.

5 Q Do you have any other knowledge or any
6 knowledge of any other contractors at that time that
7 were working for the Board of Education that we were
8 also negotiating liaison positions with at that time?

9 A I had some knowledge.

10 Q Can you tell me what contractors were they?

11 A Caristo and Mars+Normel.

12 Q And isn't it a fact that Mars, Cristo
13 and Brady were all in contact with one another at that
14 time, with the same mission?

15 A Yes.

16 Q And isn't it also a fact that through
17 negotiations we had contractors committed, to
18 your knowledge, "If Cristo or Mars or Brady go along
19 with it, we will all go along with it, until the Board
20 of Education picks it up"; is that correct, sir?

21 A That's right.

22 Q And that was through negotiations, is that
23 correct, sir?

24 A What?

25 Q It was through negotiations?

1 rp2 132a Ferrari-cross

2 good standing with the Coalition?

3 A I heard that, yes.

4 Q Wasn't it called to you that there was an
5 allegation of him taking --

6 MR. THAU: Excuse me. By whom were these state-
7 ments alleged to have been made? I have no objection to
8 it if it is by anyone involved in this case. Otherwise it
9 would be a hearsay statement.

10 If we may know from Mr. Sims if he is about to
11 quote a defendant or a co-conspirator in this case, then
12 I have no objection.

13 THE COURT: Is this something said by one of the
14 defendants in this case, Mr. Sims, that you are about to
15 ask the witness?

16 MR. JAMES SIMS: Yes, and I will rephrase it.

17 MR. THAU: In that case, I have no objection.

18 Q Isn't it a fact that I told you that Brother
19 Black was no longer affiliated with the Black and Puerto
20 Rican Coalition based on the allegation that he has taken
21 \$50 from a working member of the Coalition?

22 A I had no knowledge of that. I was told that,
23 but I had no knowledge of it.

24 Q But you were in fact told that?

25 A I was told that.

rp5

133a Ferrari-cross

Q Isn't it a fact that when you add in the union dues to a laborer's salary, that it goes over \$300 a week?

A Well, you add about 26 per cent to a salary.

Q So that in fact you were paying more to a laborer than a liaison, is that correct?

A I am not sure of the figures. If you say so.

Q By the way, isn't it a fact that Brother Black had many meetings across the street in a storefront with community people that you had knowledge of?

A Yes.

Q And in fact there was some recreational facilities going on inside this storefront also, is that correct?

A What was going on?

Q There was some recreational facilities for community people in there also?

A I never went over there to find out.

Q Did you have knowledge of block activities that were going on in that same block there?

A No.

Q By the way, how long has Frank been working for John T. Brady?

A Frank Sims?

Q Yes.

A Well, I got to go by the checks. Over two years

rp4

134a Ferrari-cross

1
2 A No. Excuse me, there are four prime contracts
3 there, the general contract, and the plumbing and electrical
4 and another, and they do not work under the general contract-
5 or. They have hired their own personnel, their own
6 contractors with the City of New York.

7 Q And liaison people?

8 a I don't know.

9 Q But they could have, couldn't they?

10 A I don't know.

11 Q You weren't on the site all the time and you
12 don't know exactly who they were hiring?

13 THE COURT: Don't ask what could have been, ask
14 him what he knows.

15 MR. ROSENBAUM: All right, if you know.

16 Q Did you have occasion to meet with representa-
17 tives of the Harlem Fight-Back?

18 A Would that be Jim Houghton?

19 Q Yes.

20 A Yes.

21 Q How many times did you meet with them?

22 A Maybe five or six times.

23 Q Did they talk about the hiring of minority people?

24 A They did.

25 Q During your discussions with Mr. Houghton, did

MR. THAU: Withdrawn.

Q Would it be fair to say that when you originally put Cleon on as a liaison, you did so on the assurance of Dick Smith that the Board of Education would pick up the tab?

A That's right, sir.

Q So it was no skin of your back, so to speak?

A That's right.

Q If they were willing to pay \$600 a week, it was fine with you?

A That's right.

Q And some time thereafter you found out that the Board of Education was cutting the funds off?

A That's right. No, not cutting them off. They never put them on.

Q You expected reimbursement?

A That's right.

Q And that's when the decision was made to cut Cleo off from his liaison job?

A Right.

Q And based on Government's Exhibit 32, the 23 checks you looked at earlier, you concluded that the date Cleo was put on as liaison, the first time around, was March 30, 1973, is that right?

1 A That's right.

2 Q Would it be fair to say that the demon-
3 stration of April the 14th was considerably more rowdy
4 tha the one of some time earlier? Or, to put it
5 another way, was it a rowdy demonstration on April the
6 14th?
7

8 A I don't know which one that was. I don't
9 know which demonstration we are talking about, about
10 the demonstration we were discussing before wasn't
11 rowdy. It was just --

12 Q Civil rights?

13 A It was civil rights business.

14 Q In fact, it wasn't a demonstration; it was
15 people getting together talking.

16 They demonstrated their needs and you demon-
17 strated yours to them, is that right?

18 A I guess so.

19 MR. THAU: May I have a minute, your Honor?

20 (Pause.)

21 Q Now, when you told Cleo Williams that you would
22 have to let him go as a liaison man, how did he react?

23 A What was that?

24 Q How did he react?

25 A He didn't say a word.

1 Q He didn't threaten; just accepted it,
2
3 right?

4 A He accepted it, that's all.

5 Q What?

6 A He accepted it.

7 Q And it is -- how long thereafter was that
8 meeting where somebody's shoes were stolen and some of
9 your maps were slashed?

10 A I don't recall the exact date of that. I
11 have got it in my report some place, but I haven't got
12 the report.

13 Q Well, I'm not asking you the exact date.
14 I am asking you how much time passed.

15 A I don't remember.

16 Q Well, you testified, didn't you, that at
17 that meeting, the meeting of the missing shoes, took
18 place after the day of the fire, do you remember that?

19 A If I said that I must have had the date.

20 Q So may we agree --

21 A All right.

22 Q Would it refresh your recollection for me
23 to suggest that on some prior occasion you have testified
24 that that meeting took place on April 14, 1973?

25 A I guess that's what it was then.

1 mpa 138a Tannenbaum-direct 3103
2 of buildings. We don't know. He couldn't possibly
3 know.
4 THE COURT: Well, he was asked whether
5 they were specifically made for this building and his
6 answer was what?
7 THE WITNESS: Yes.
8 MR. ROSENBAUM: But the following question
9 was could they be used in any other building. He
10 couldn't possibly know that.
11 THE COURT: Well, probably that was the
12 extent of the questioning on that score, I take it.
13 MR. HARRIS: It is.
14 One moment, please, your Honor.
15 (Pause.)
16 MR. HARRIS: We have nothing further
17 at this time, your Honor.
18 THE COURT: All right, Mr. Richman.
19 CROSS EXAMINATION
20 BY MR. RICHMAN:
21 Q Mr. Tannenbaum, when did you testify before
22 the grand jury?
23 A When? When they called me.
24 Q Would that be around December, 1973?
25 A I don't remember the date.

1 mpa 139a Tannenbaum-cross 3104

2 Q Well, if I told you that's the date --

3 A Then that would be the date.

4 Q And up until that point you had never even
5 met Robert Munoz ?

6 A No.

7 MR. RICHMAN: No further questions.

8 THE COURT: Mr. Sims.

9 CROSS EXAMINATION

10 BY DEFENDANT JAMES SIMS: ✓

11 Q Mr. Tannenbau, you testified that there
12 were several demonstrations on the Starrett site, is
13 that correct?

14 A That is right.

15 Q And the demonstrations prior to, say, the
16 demonstration that there was a disturbance on, all the
17 other demonstrations were very peaceful, is that correct?

18 A Peaceful in the sense where you prevented
19 the men from going back to work, is that what you call
20 peaceful?

21 Q I am asking you -- let me rephrase it.

22 Was there any person hurt on the job during
23 the demonstration?

24 A The first two, no.

25 Q Any demonstration.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mpa

140a Tannenbaum-cross

3105

A No. Just property damage.

Q By the way, on the job you are known as Jesse James, is that correct, sir?

A Supposedly.

Q And in fact, on the back of your helmet was "Jesse James," is that correct, sir?

A That's right.

Q And isn't it a fact that because people looked at you as a very bad guy, you were called Jesse James?

A That is not so, Jimmy, and you know it.

Q Isn't it a fact that every demonstration that we had on that site was peaceful up until the time that you came out and said to the people, the demonstrators, "I will have you all locked up. I will call the cops"?

Is that correct, sir?

A No.

Q You didn't tell nobody that you would call the cops and have them locked up and that your orders from your boss was to have these people locked up?

A My orders from my boss on the third incident, yes.

Q And you did in fact inform the demonstrators

1
2 Q Can you tell me exactly --

3 MR. JAMES SIMS: Withdrawn.

4 Q Isn't it a fact that your testimony was very
5 near the end, and there had never been a mention of me
6 threatening you, and you went outside to talk about that?

7 A The grand jury asked questions. I answered.
8 Then I was excused. As I went out I had mentioned to Mr.
9 Putzel that you had definitely threatened me. Then he pro-
10 ceeded to call me back in, and it was included in the testi-
11 mony. He did not question me on it. I remembered it.

12 Q But you had never told him that, prior to that
13 meeting; is that right?

14 A I beg your pardon?

15 Q Prior to leaving the --

16 A No.

17 Q All right.

18 Mr. Tannenbaum, isn't it a fact that your
19 company felt that you personally couldn't deal with the
20 problems that came up on the job, and that is in fact the
21 reason why you were terminated?

22 A I don't believe that that was the reason.

23 Q But during the same period of time you were
24 terminated off of that job; is that correct?

25 A Yes; I was.

pp3

142a Tannenbaum-cross

Q And have you ever overheard me saying to you or to your superior that a super on the job makes or breaks the job? Have you ever heard that statement?

MR. HARRIS: Your Honor, we object to a question which has Mr. Sims' opinion in it.

THE COURT: Yes. Sustained.

Q Have you ever heard me make any statement in reference to supers?

MR. HARRIS: Objection.

THE COURT: Yes. Sustained.

MR. JAMES SIMS: May I have a moment again?

THE COURT: Yes.

(Pause.)

Q Isn't it a fact, Mr. Tannenbaum, that the Coalition's interest was in fact jobs for community people and minority subcontractors?

A So I was led to believe.

Q And, by the way, how much money did I ask you for personally?

A None.

Q Did anybody else, any other Coalition member, ever ask you for any personal money?

A No.

Q Not for themselves?

1 rpl1 143a Wicks cross

2 "Q How much?

3 "A At that time, I believe I gave him \$275. That
4 was all I had."

5 Do you remember those questions and making those
6 answers?

7 A Yes, I remember.

8 BY DEFENDANT JAMES SIMS:

9 Q By the way, did I ever make any statement to you
10 about losing a crane or a bolt would cost you a crane?
11 Did I ever make a statement like that?

12 A No, you didn't.

13 Q Isn't it a fact that when you suggested a
14 possible insurance claim and submitting certain bills and
15 what have you, that the two gentlemen informed you the
16 fact that their car was now inoperable due to the fact
17 that the windshield was broken and some other damage had
18 occurred to the automobiles and they wouldn't be able to
19 drive the automobiles unless they were paid. Is that
20 correct?

21 A No, I don't recall that.

22 Q You don't recall no conversation that was similar
23 to that?

24 A No, sir.

25 Q By the way, you say there was some damage on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rp12

144a Wicks-cross

3177

your site that you saw after the demonstrators left?

A Yes.

Q By the way, by any chance did you see who caused those damages?

A No, I did not.

Q But you did testify that there was people throwing stuff of the buildings, workers, on to the demonstrators, is that correct?

A I said I noticed the damages to the automobiles. I don't know how they were damaged.

Q Were you told that there was people throwing stuff off the roof on to the demonstrators and to the cars?

A Yes.

Q So then you don't really know whether demonstrators or actual workers on the site caused that damage, is that correct?

A To what, to the autos, Mr. Sims?

Q Do you know if it was demonstrators -- you don't know, is that correct, if it was demonstrators that caused the damages or it was demonstrators, is that correct?

THE COURT: Just a minute, read the question.

(Question read.)

DEFENDANT JAMES SIMS: I withdraw the question.

Q Isn't it a fact that you have no individual

A I don't know who it was, but just assumed.

A No, sir.

A No, sir.

A No, sir.

MR. HAGEN: No questions.

A That is correct.

A That is correct.

1 rpl 146a Carter-cross

T5 2 Q How close was that man when you first detained
3 him to the bomb?

4 A He was on one side of the site and the con-
5 struction site was on the other.

6 Q How wide a street was this?

7 A Maybe two car lengths -- widths, I mean.

8 Q Did you --

9 A Two cars could get up the block if there was no
10 construction there.

11 Q Did you charge him with criminal possession of
12 stolen property?

13 A No, I did not.

14 Q With trespass?

15 A No, I did not. I had no complaint about it.

16 Q Had he not told you himself that he had taken
17 the stuff from the immediate vicinity of the construction
18 site?

19 A He said he had taken it from scraps lying on the
20 ground over there on the outside of the construction.

21 Q Outside the site?

22 A Yes.

23 Q Was the site fenced off from the sidewalk?

24 A Yes.

25 Q Was there an opening in that fence?

1
2 A My recollection, I think there was, I am not
3 positive. I think there was. There was a hole.

4 Q How far into the site did you find this device?

5 A The device was inside the gated area, the fenced
6 off area. It was like I would say maybe 10 feet from the
7 fence.

8 Q Inside?

9 A No, outside.

10 Q It was on the public sidewalk?

11 A Yes, on dirt. In other words, the way the
12 construction site was, like where they were doing the
13 construction was still dirt where the sidewalk was torn up.
14 Where I found the pipe bomb was approximately
15 maybe 10 feet from the fence itself.

16 Q Now, did you say that the device was in some
17 sandpile?

18 A No, it was on the dirt.

19 Q It was soft dirt?

20 A Yes.

21 Q Such soft dirt as would take the impression of
22 footprints if you were to walk in it?

23 A I guess so. So many people walking back and
24 forth you couldn't take any footprints of it.

25 Q There weren't very many people walking around

rp3 148a Carter-cross

the neighborhood at a time in the morning?

A Yes, there is. 5.40 in the morning, this is a pros location, prostitutes location, and prostitutes and lots of Johns over there.

Q Do prostitutes generally have size 12 shoes perhaps -- withdrawn.

Can you tell the difference --

THE COURT: Mr. Thau --

MR. THAU: Yes, your Honor.

Q You knew that --

MR. THAU: I apologize, your Honor.

Q You knew, did you not, that you had a perfect right to detain someone for a short investigation without necessarily having to arrest that person, is that right?

A I made the decision on the spot that the information that he gave me and from what I saw, that he had no connection with it whatever.

Q He convinced you beyond a reasonable doubt that he had nothing to do with it?

A That is correct, that is my discretion.

Q Did you call your commanding officer over the car radio?

A I notified my supervisor through the radio.

Q Before you released the man?

rp4

149a Carter-cross

1 A I think it was either before or after, I am not
2
3 sure.

4 Q Did you tell your commanding officer, "I have a
5 guy here in the proximity of a bomb I found, can I release
6 him because he told me who he is"?

7 A No. When my supervisor showed up, I explained
8 to the supervisor -- he asked me how I located the bomb and
9 I told him the situation and it was my discretion whether
10 I believed the man was actually involved in it.

11 If it had been -- if the wire had been that you
12 could see it wasn't scrap wire, then I could have detained,
13 but since it was scrap wire and I knew where he was going
14 and I seen the guy around the area before, I felt there
15 was no reason to detain him.

16 Q Did he point out to you the spot where he had
17 taken the wire?

18 A He just said over on the side of the construction,
19 there was lots of scrap wire all over the place.

20 Q How close was that scrap wire which was actually
21 lying around from the device which you found?

22 A He said he picked it up along the side. There
23 was scrap wire all over, so he could have been over by the
24 position where the bomb was or might not have.

25 Q Did you make a note of the man's name and

1 rp5

150a Carter-cross

2 address?

3 A No, I did not.

4 MR. THAU: Thank you.

5 MR. GREENFIELD: May I proceed?

6 THE COURT: Yes.

7 BY MR. GREENFIELD:

8 Q Police Officer Carter, did you file any document
9 with relation to this case with the Police Department?

10 A Yes, I did.

11 Q What type of document did you file?

12 A I made a complaint report, UF61.

13 Q Do you have that with you?

14 A I don't have a copy, no.

15 Q Did you give a copy to the United States Attorney?

16 A The United States Attorney has one, yes.

17 MR. GREENFIELD: May I see a copy of that?

18 MR. GARNETT: He has that, it was turned over as
19 part of the 3500 material.

20 Q Is this your report?

21 A No, it is not the 61 I made out.

22 Q You made out a UF61, the one I gave you?

23 A No, this is another office who made a report.

24 Q What officer made this report?

25 A Henry Bullock, it looks like.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rp

151a Dickson-direct

3311

at a point down the road a ways and we had a chain link fence gate and when we got there approximately sixty, seventy or eighty men were out in the street, outside the gate.

Q Would you tell us what occurred?

A There was one or two automobiles had been partially driven into the gate to prevent it closing and no attempt made to go into the site at all and Mr. Munoz was making a speech to his people.

Q Will you tell us as best you recall what Mr. Munoz said on this occasion?

A Again, he was castigating the contractor and you might say the System for the amount of building and construction work going on in the South Bronx and the minimal amount of contribution or participation which the community was having in the work.

Q Did he make any remarks regarding you personally?

A Yes, he did.

Q What did he say?

A He said that is Bill Dickson of Slattery, that he was the man that had me shot.

Q Did you ever have Mr. Munoz shot?

A No, I didn't.

Q Was anything said with reference to Wounded

2 MR. RICHMAN: I want to show that I spoke to
3 this man. That is just what I want to show.

4 THE COURT: You can ask him if you spoke to him
5 yesterday and let it go at that.

6 Q Did you speak with me yesterday?

7 A Yes, I did.

8 Q For about five or six minutes?

9 A Yes.

10 Q Didn't I tell you you didn't have to talk to me
11 if you didn't want to?

12 A That is true.

13 Q We discussed --

14 MR. HARRIS: Your Honor, I object to anything
15 discussed yesterday. Questions and answers are proper here.

16 MR. RICHMAN: I am asking a question we dis-
17 cussed this case, didn't we?

18 THE WITNESS: Yes.

19 Q We discussed this case?

20 A Yes.

21 Q Did Mr. Munoz ever ask for anything for himself
22 from you?

23 A No.

24 Q Never threatened you personally?

25 A No.

1 mpa4 153a Dickson-cross 3357
2 "Q You had not yet started at the Hunts Point
3 project yet?

4 "A No, actually as far as the community is con-
5 cerned, they aren't that much concerned about what your
6 minority representation is as to what your community
7 representation is.

8 "Q What was your community representation at
9 that time?

10 "A Well, it wasn't anywhere near 20 per cent."
11 Would that be the questions posed to you
12 and the answers given by you on January 8, 1974?

13 A That sounds right, yes.

14 Q Now, on the 16th you spoke to Mr. Sims
15 concerning hiring of persons. Did there come a time
16 that you met with Mr. Munoz?

17 A In the March meetings, March and April, my
18 recollection is other than the demonstration, Bob really
19 didn't participate in the meetings much.

20 Q So he participated at a demonstration?

21 A Yes.

22 Q But not at the meetings?

23 A Not at the site meetings or -- around March.
24 We had spoken previously about subcontract work in, oh,
25 September, October of '72, November of '72.

1 mpa 154a Dickson-cross 3361

2 A Yes.

3 Q And he made a speech at that time?

4 A Yes.

5 Q And he made reference to someone that you

6 were the person responsible for having him shot?

7 A Yes.

8 Q Did you know for a fact that Mr. Munoz was

9 shot?

10 A Yes, I did.

11 Q In fact, the date I pointed to before,

12 March 28, 1972, Mr. Munoz was shot, was he not?

13 A Yes.

14 Q And did you have anything to do with his

15 shooting?

16 A No.

17 Q Do you remember being questioned concerning

18 that before the grand jury in this case?

19 A Yes.

20 Q And you also said no at that time?

21 A Yes.

22 Q But Mr. Munoz accused you of having had him

23 shot, is that right?

24 A Well, yes, he referred to me as the man

25 responsible for having him shot, yes.

1 rp7 155a Dickson-cross

2 A Yes.

3 Q And the people had gone into the hole and Mr.
4 Munoz had never entered that -- if you pardon the expres-
5 sion -- hole?

6 A No, he and I were together almost the entire
7 period.

8 Q He was talking to you?

9 A Right.

10 Q You never saw him do anything with relation to
11 telling the people to create an incident?

12 A No, he spent the whole time hollering at me.
13 That is his way.

14 Q You said the Harlem Fight-Back was there?

15 A Yes.

16 Q What was that?

17 A A similar organization interested in promoting
18 the interests of minorities in the construction industry.

19 Q Do you remember a person named Eddie Cintron?

20 A Yes, I know Eddie.

21 Q There was a fire on this site, wasn't there?

22 A Yes.

23 Q And was the Black and Puerto Rican Coalition
24 ever charged with anything with relation to this fire?

25 MR. HARRIS: Objection.

1 rp8

156a

Dickson-cross

3374

2 THE COURT: What is the objection?

3 MR. HARRIS: My objection is this witness's
4 knowledge whether legal process was ever started with regard
5 to this incident is irrelevant. He is not competent to
6 testify to this fact.

7 THE COURT: What do you say, Mr. Richman?

8 MR. RICHMAN: I withdraw the question.

9 Q Mr. Dickson, isn't it a fact that Eddie Cintron
10 of Harlem Fight-Back was charged with this crime?

11 A He was charged with a crime, yes, at that site.
12 Yes.

13 Q Isn't it a fact that Eddie Cintron pled guilty
14 to arson?

15 A I know he was indicted for arson or felonious
16 mischief or what have you. I don't know what the ultimate
17 result was.

2 18 Q Isn't it a fact that Eddie Cintron was the
19 leader at that time or one of the leaders or officials of
20 Harlem Fight-Back?

21 A To the best of my knowledge, yes.

22 THE COURT: What time are we talking about?

23 MR. RICHMAN: At the time of this demonstration,
24 March of 1972.

25 THE COURT: 1972?

1
2 you just didn't want anybody on your site in that position
3 and you had some very heavy concern in that nature, that
4 you specifically wanted me to be the person that would be
5 representing your company there?

6 A Yes.

7 Q Did there come a time when we got another
8 conversation and the conversation involved where those
9 funds were going that you were paying into the Coalition,
10 sir?

11 A Yes, we discussed that several times.

12 Q Isn't it a fact that you were told that those
13 funds were being used for carfare, for the men -- for car-
14 fare and different expenses of the Black and Puerto Rican
15 Coalition instead of as salary?

16 A That is true.

17 Q You had no objection as to that, is that
18 correct, sir?

19 A No.

20 Q What was the name of your super on the site?

21 A Jerry White.

22 Q Isn't it a fact that to your knowledge there
23 was many occasions that me and Jerry White was in contact?

24 A Yes.

25 Q And I would come out to the site, the job, and

offer to look around and see what was happening, requesting from Jerry or perhaps other people on the job for employment for community people?

A That is true.

Q Isn't it a fact that there were more community people hired by your company and other people on that site, sir?

A Yes, sir. We built up, I think, a considerable representation.

Q Did I ever ask you for any money personally for myself or anything of value?

A No.

Q Was the checks made payable to me or were they payable to the Black and Puerto Rican Coalition, sir, for these payments?

A They were made payable to the Coalition.

Q By the way, have you ever had any reports from any guards or any member of your organization or to your own knowledge or anyone seeing me setting a bomb on your site or anything of that nature?

A No.

Q That you know of?

A No.

Q Would you consider our relationship as being

1 A No physical violence against individuals,
2
3 but there was against property.

4 Q Did you see actually the occurrence?

5 A I didn't see the occurrence. I saw the
6 results.

7 Q So you don't know from your own knowledge?

8 A I spoke to two men --

9 Q Only from your own knowledge.

10 A Actually witnessing these events?

11 Q Yes, that's what I am talking about.

12 A Yes.

13 Q I mean, you testified before, haven't you?

14 MR. LITTLEFIELD: I object, your Honor.

15 THE COURT: Yes.

16 Q So you saw no violence at all?

17 A No, sir.

18 Q And this man wasn't there (indicating de-
19 fendant Munoz)?

20 A No, sir.

21 MR. RICHMAN: Thank you.

22 THE COURT: Anything further?

23 If not, the witness may come down.

24 MR. LITTLEFIELD: I have some redirect.

25 MR. LEWIS: Mr. Sims has some questions.

1
2 A Because it was about seven or eight days
3 before we had some damage on the job.

4 Q Now, do you know the date of the damage on
5 the job?

6 A Yes. It was October 18th.

7 Q 1973?

8 A Right.

9 Q Now, after you told Mr. Sims on this tele-
10 phone call that you weren't going to give the sub-
11 contract to R because his price was too high, did
12 Sims say anything?

13 A Yes. He was very upset about it and he
14 said, "We don't know if we are going to allow you to
15 work in our community." And I said, "Well, what can
16 I do? We don't have an open checkbook on the job,
17 and we have got to set a price where we are going to
18 live with it." And he said -- I don't remember
19 his exact words, but he said, "We aren't going to let
20 you work in our community and we aren't going to let
21 another electrician do the job." And he hung up
22 on me.

23 Q Did you have another conversation with him
24 on that subject?

25 A No, that was the last conversation I had

with him on that subject.

Q What day of the week, do you recall, was that conversation?

A I believe it was a Thursday or a Friday night.

Q What happened the next week?

A Well, the electrical contractor that we selected started on the job that Monday, the following Monday, and the following Thursday there was major damage done to the job during the night.

Q Now, first --

THE COURT: Excuse me. Do you want the answer read back?

MR. HAGEN: No. I can barely read it back.

THE COURT: If you want to, we can have the answer read back.

MR. HAGEN: No. I am straining to hear it.

Q Let me ask you: at this time, in October of '73, what stage was the work in?

A The buildings were -- the two showroom buildings were completely built. The masonry was up. I believe the steel was up. We were starting the masonry on the building in the rear. Rough

rp

162a Montana-cross

3545

it?

A Yes.

Q You also testified that Mr. Munoz told you that he had stopped or participated in stopping other jobs?

A Yes.

Q In telling you these things he didn't tell you that he ever fire-bombed any job?

A No, he didn't.

Q He never told you that he had ever threw a bomb or even caused an arson, did he?

A No, he didn't.

Q He told you that he demonstrated?

A Yes.

Q Stopped in front of concrete trucks?

A Yes.

Q He told you that?

A Yes.

Q But he never told you that there was any bombs or fires or what have you?

A No.

Q In fact, is it not a fact that he never made any reference to fires or bombs at all?

A Yes, that is true.

Q That is true, right?

2 A Yes.

3 Q Isn't it a fact that he never demanded anything
4 of you, he only requested of you?

5 A No, sir, that is not true.

6 Q I am just referring to your testimony before the
7 grand jury on January 15, 1974, sir, page 61, line 23.

8 Do you remember saying this:

9 "Insofar as demands it wasn't" --

10 MR. LITTLEFIELD: That is just the answer, your
11 Honor. Read the question to the answer.

12 MR. RICHMAN: I would have to go back quite a
13 full page.

14 MR. LITTLEFIELD: Read the question and the answer.
15 I don't think that you can pick it in the middle of an
16 answer.

17 Q The question was put to you by Mr. Putzel:

18 "Following these threats what specific demands
19 were made by Munoz and Sims?

20 "A Insofar as the demands, it wasn't on a demand
21 basis. They requested that we employ the people on the
22 site. They requested we give special consideration to
23 contractors that they recommended and they also at the same
24 time were trying to stress the point they expected a con-
25 siderable part of the work, and I agreed to this predicated

1

rp

164a Montana-cross

3549

2

Q That was three guards, was not that right?

3

A I think so, yes.

4

Q 134 hours' work?

5

A That sounds right.

6

Q And that comes to approximately \$3.58 an hour,

7

isn't that right?

8

A Yes.

9

Q So that is what these checks that Mr. Littlefield

10

introduced in evidence were for?

11

A Right.

12

Q They were for services rendered?

13

A Yes.

14

Q And this service was actually rendered, was it

15

not?

16

A Yes.

17

Q These were minority people that were hired?

18

A Yes.

19

Q After these pipes were broken that you dis-

20

cussed last week, you had a meeting with Mr. Munoz and others,

21

did you not?

22

A Yes, I did.

23

Q Did anyone at that meeting make reference to the

24

destruction that had been done at your site?

25

A Not directly, no.

Q The answer is no, isn't that a fact?

rp

165a Montana-cross

3550

1
2 A Yes.

3 Q By the way, when you started the job, did you
4 have many minority people working for you?

5 A We don't employ many people directly. We sub-
6 contract 98 per cent of our work out.

7 Q Most of the people working on that job were not
8 minority people, isn't that a fact?

9 A It is what you consider minorities. At the
10 beginning of the job 50 per cent of the people were Portuguese.

11 Q Portuguese?

12 A Right.

13 Q Not Puerto Ricans?

14 A No.

15 Q Not Blacks?

16 A No.

17 Q Isn't it a fact if I am not mistaken that the
18 people who were working were by and large persons who just
19 came over from Portugal, not even had citizenship nor even
20 cards?

21 A You are absolutely wrong. These people were
22 working for a construction company that was working for us
23 for eight or nine years and these same people were his em-
24 ployees since then.

25 Q These were all Portuguese but not minorities?

rp7

166a Vega-direct

3665

Q What, if anything, did Mr. Williams say?

A He said he got paid.

Q Calling your attention to approximately two months after the first incident that you testified to, were you again present at a meeting of the Black and Puerto Rican Coalition?

A Yes.

Q Who was present at that meeting?

A The same people, Frank Sims, Jimmy Sims, Bob Munoz, Cleo Williams and Cuadrado.

Q this meeting did the subject of Bruckner Boulevard ever come up?

MR. THAU: Objection, leading.

MR. HARRIS: Your Honor --

THE COURT: That is not leading, he can ask whether a subject came up.

Q Did the subject of Bruckner Boulevard come up?

A Yes.

Q What was said about Bruckner Boulevard and who said it?

A Jimmy Sims said he was going on a hit on Bruckner Boulevard.

Q Did he say what they were going to hit on Bruckner Boulevard?

rp8

167a Vega-direct

3666

1
2 A The job that was on Bruckner Boulevard, the
3 Ford Company, Ford Motor Company.

4 Q What did you understand a hit to mean?

5 A Hit means to demonstrate, more or less.

6 Q Did they say why they were going on a hit at the
7 Bruckner Boulevard site?

8 MR. THAU: Objection to "they."

9 Q Did James Sims or anyone else state why they
10 were going to Bruckner Boulevard?

11 MR. THAU: Objection to anyone else. This
12 witness said James Sims said it.

13 MR. HARRIS: Your Honor --

14 THE COURT: First ask one question at a time.
15 Did James Sims say anything, and then ask did anybody else
16 say anything.

mpal7

W. Vega-cross

3726

1
2 BY MR. RICHMAN:

3 Q Mr. Vega, do you know Fruto Alicea?

4 A Who?

5 Q Fruto Alicea.

6 A No, I don't think so.

7 MR. RICHMAN: Thank you.

8 THE COURT: All right. Anything further?

9 Any redirect?

10 MR. LITTLEFIELD: Yes, we have redirect

11 but --

12 MR. GREENFIELD: I have no questions.

13 MR. LITTLEFIELD: May I proceed, your

14 Honor?

15 THE COURT: Yes.

16 MR. LITTLEFIELD: Your Honor, I am sorry.

17 May I confer with Mr. Harris?

18 THE COURT: Yes.

19 MR. LITTLEFIELD: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. LITTLEFIELD:

22 Q Mr. Vega, yesterday Mr. Richman asked you
23 about whether Mr. Munoz ever mentioned bombs or arsons
24 at a meeting. Do you recall that question?

25 A Yes.

mpa

W. Vega-redirect

3730

1
2 A Well, there was 300 people there, but not
3 all at the same time.

4 Q Was there a small meeting before the big
5 meeting?

6 A Yes.

7 Q And you learned what light bulb means at
8 the small meeting before the big meeting?

9 A Yes.

10 Q Do you remember which one of the people you
11 just named indicated to you what light bulb meant?

12 A Well, let me see.

13 MR. RICHMAN: I object to the question,
14 your Honor. I don't think he even said that any of
15 these people even suggested the meaning of the term.
16 He said he learned it at two of these meetings. Unless
17 we can specify the source of the knowledge --

18 THE COURT: That's what we are aiming at
19 by this question.

20 MR. RICHMAN: No, Mr. Littlefield asked
21 which one of these people --

22 THE COURT: He was asked who was present
23 at the meeting.

24 MR. RICHMAN: He said these people and
25 numerous others.

1 mpa

W. Vega-redirect

3731

2 Q Do you recall how you specifically learned
3 what light bulb meant?

4 A Yes.

5 Q How?

6 A Let me put it to you like this. I have
7 to explain it to you. I can't answer a question
8 direct like that, because there's no answer to it like
9 that. There are certain slangs that are used, terminolo-
10 gies, right, and one of the terminologies was light
11 bulb, that I heard, at one of the meetings. Two of
12 the meetings the people that I named were there, and
13 I learned of the word "oight bulb" there, and it meant
14 explosives. I never seen one, don't know what it looked
15 like.

16 Q And when the term was used, was it used
17 specifically in connection with a construction site?

18 A I would assume it was.

19 MR. RICHMAN: Objection.

20 MR. LEWIS: Objection.

21 A Okay. It was.

22 Q Now, yesterday you testified that Cleo
23 Williams had asked Munoz for \$200, and eventually Cleo
24 Williams told you he had gotten \$200?

25 A Right.

1 mpa

W. Vega-redirect

3734

2 timony about this on cross. It's improper redirect.

3 MR. LITTLEFIELD: I am exploring now whe-
4 ther Munoz mentioned light bulb, and if did, in what
5 context.

6 THE COURT: All right.

7 THE WITNESS: Could you read the question?

8 THE COURT: Read the question, Mr. Re-
9 porter.

10 (Question read.)

11 A No, I didn't hear him say he was going to
12 use a light bulb to get no job for the CBS Guard Service.

13 Q What did you hear him use the words "light
14 bulb" in connection with?

15 A You see again I have to --

16 Q All right. You can explain.

17 A Because this is really complicated.

18 MR. LEWIS: Your Honor, I object. I don't
19 think there was any testimony that Mr. Munoz used the
20 term "light bulb." He said he learned it at a
21 meeting with 300 people.

22 MR. LITTLEFIELD: I would disagree that
23 he said he learned it at a meeting with 300 people.

24 THE COURT: Well, he is being asked if
25 Mr. Munoz used the term.

1 mpa

Fernandez-direct

3793

2 and picketing there was some negotiating as far as
3 jobs.

4 Q Who did the negotiating?

5 A Mr. Sims, Mr. Munoz and other persons.

6 Q All right. What happened at that demonstra-
7 tion?

8 A After negotiating, it got to a point where there
9 was nothing, you know, as far as we were told, there was
10 nothing going on in terms of hiring people. We
11 forced our way into the site and stopped the work.
12 We, the group of us, we broke the trailers --

13 MR. GREENFIELD: Objection as to "we."
14 Who did what?

15 Q Would you tell us who led the group at this
16 point?

17 A Jimmy Sims.

18 Q And what happened?

19 A There was a lot of fires set. The trailers
20 were broken, the tires were broken, the cranes were
21 broken. The men, there was no work, you know, they
22 stopped the work period.

23 The police came. The Fire Department
24 came. We stayed there all day. The main purpose
25 was to stop the site.

Q All right. Did there come a time when you participated in the demonstration at another construction site?

A Yes.

Q And which site was this?

A That was the new Lincoln Hospital, the new hospital that was being built.

Q Was there a meeting which preceded that demonstration?

A Yes, sir.

Q And where was this meeting?

A It was held at the Hunts Point Corporation.

MR. RICHMAN: I am sorry. Can you please speak up. It's very difficult to hear.

THE COURT: You will have to speak up.

A It was held at the Hunts Point Corporation.

Q Can you tell us who was present at that meeting?

A All the staff members of the corporation and delegate agencies, Mr. Sims; other members, you know, from different --

Q Who presided at that meeting?

A Mr. Munoz.

Q What did he say at that time?

1 A The same thing, that the construction—
2
3 they weren't hiring minority groups, and he needed our
4 support and that it would be peaceful.

5 Q I beg your pardon?

6 A That it would be a peaceful demonstration.

7 Q All right. Did there come a time when you
8 went to the construction site there?

9 A Yes, sir.

10 Q And what happened?

11 A Well, myself, I went earlier, with another
12 person, asnd we blocked off the entrance so the trucks
13 couldn't come in and out, and after we were there 20 minutes
14 a lot of people came, you know, from the corporation,
15 the agencies, and --

16 Q Were you given instructions on what to do
17 at that site?

18 A Yes.

19 Q Who gave the instructions?

20 A Mr. Munoz.

21 Q And what did he tell you to do?

22 A Told me to go with another person in the
23 car to block off the entrance where the trucks came.

24 Q All right. So what happened at that
25 site?

1
2 A There was over 500 people. They broke in
3 the site again. They stopped the work. Several
4 persons were arrested. Mr. Munoz was arrested that
5 day.

6 Q Following Mr. Munoz' arrest, what happened?

7 A Mr. Sims continued to, you know, give
8 orders.

9 Q Is this James Sims?

10 A Yes, sir.

11 Q Now, at this demonstration, were there per-
12 sons from SERA who participated in it?

13 A Yes, sir.

14 Q And how did they come to participate in
15 that demonstration?

16 A They came to support Mr. Munoz.

17 Q Now, subsequent to Mr. Sims taking over leader-
18 ship of the group, what happened?

19 A The persons from SERA went back, you know,
20 to the program, and it got out of hand, and there were
21 several fires started, some police trucks were burnt,
22 and everybody after an hour or so after the police
23 came, everybody, you know, went home.

24 Q All right. Did there come a time when you
25 participated in another demonstration at a construction

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q Something like, referring now to Defendant Munoz Exhibit W, an exhibit, something like 25 different times, is t that correct?

A Yes.

Q And in that period of time there were numerous occasions when you had discussions with district attorneys?

A Yes, sir.

Q You spoke to Assistant District Attorney Dorff, correct?

A Yes.

Q Assistant District Attorney Giles Govinasi?

A Yes.

Q Assistant District Attorney Utivan?

A I don't remember him.

Q That's the man with the funny handlebar moustache.

A I don't remember.

Q In any event, you spoke to Govinasi and Dorff?

A Yes, sir.

Q Any other assistant district attorneys?

A No.

1

2

A No.

3

4

Q And they said to you, "You can walk out of this case," isn't that right? They told you that?

5

A No.

6

7

Q They never told you, "We are not interested in you, we want somebody else"?

8

A Yes, they said that.

9

10

Q They said, "Give me Bob Munoz," didn't they tell you that?

11

A In a roundabout way.

12

13

Q Two years ago, two and a half years ago, they told you they wanted Bob Munoz, isn't that a fact?

14

A Yes.

15

16

Q And in fact they told you, "You don't have to go to jail, make up a story, just give me Bob Munoz," isn't that a fact?

17

18

A No, sir.

19

20

Q By the way, these people you pointed to in the audience, is this lady here, is that right? I am pointing to the lady in the brown suit.

21

22

A Yes, sir.

23

24

Q She is your girlfriend, isn't she?

25

A Yes.

Q She's a good friend of yours, isn't she?

rp2

Fernandez-cross

corporation it burned down, didn't it?

A Yes, sir.

Q Can you tell us accurately or to the best of your ability approximately when it did burn down?

A Approximately -- it could have been around August.

Q Of 1973?

A September, I am not sure.

Q Shortly after you came out of jail in 1973, isn't that a fact?

A Yes, sir.

Q If I were to suggest on or about the 16th of July, 1973, would I be about right?

A That is right, it is possible.

Q As a result the Hunts Point Community Corporation had to find new headquarters, isn't that right?

A Yes.

Q For a while they used 149th Street, the Brotherhood of Minority Workers or the ~~South Bronx Community Corporation~~ tion, is that right?

A Those were some of the offices, yes.

Q Eventually they found new headquarters?

A Right.

Q Can you tell us when they found the new headquarters?

A December, 1974

rp3

Fernandez-cross

Q December, 1974?

A That is when we moved in December.

Q December of 1974 or 1973?

A 1974.

Q December of 1974 you moved into 809 Southern Boulevard, wasn't it?

A Yes, sir.

Q Now, Miss Fernandez, did there come a time in March of 1972 that you heard about an event from some of the people here, shall we say, about Mr. Munoz having been shot?

A Yes.

Q Did you hear who did the shooting?

A Rumors, just heard rumors.

Q Did you hear the rumors from some of the people at the tables?

A I can't say, it was just rumors.

Q Isn't it a fact you heard some contractors had shot Mr. Munoz?

MR. GARNETT: Objection, your Honor.

THE COURT: Yes, sustained.

Q Did you hear or see articles in the newspapers concerning Mr. Munoz's shooting?

MR. GARNETT: Objection, your Honor.

THE COURT: Sustained.

1 rpl1

Cuadrado-direct

2 A Yes. I was passing by on the corner of St.
3 Ann's --

4 MR. GREENFIELD: I can't hear what he is saying.

5 A (Continuing) I was passing by a stop on St.
6 Ann's and 149th Street.

7 Q On that occasion did you meet anybody?

8 A Yes.

9 Q Before you tell us who you met will you tell us
10 what was located at St. Ann's and that address?

11 A It was a construction site located in the corner.
12 They were building two new buildings plus they were re-
13 habilitating some buildings there.

14 Q Both new and rehabilitation?

15 A Yes, sir.

16 Q Will you tell us on that occasion who you met,
17 if anybody?

18 A I met Mr. Eddie Jackson.

19 Q On this occasion, had you ever met Mr. Jackson
20 before?

21 A Yes, he was working for the Hunts Point Corpora-
22 tion.

23 Q How long did you know him when you met him on
24 this occasion?

25 A About a year prior to that. He was working in

rp14

1 week of May, 1973, did you have occasion to meet Mr. Sims,
2 Mr. James Sims, on a corner in the Bronx?

3 A Yes, I met Mr. Sims in the corner of Colon and
4 149th Street at 6 or 7 -- it was around 7 o'clock.

5 Q On that occasion did you have any conversation
6 with James Sims?

7 A Mr. Sims told me that he hold a little meeting
8 with Mr. Sam Amengual and they were discussing regarding
9 doing some work for him.

10 Q Did he say anything else to you?

11 A When I say what type of work, he said he want
12 me to do a job like the one I did at 149th Street and Morris
13 Avenue.

14 Q Was Mr. Amengual a contractor?

15 A Yes, he is an electrician contractor.

16 Q What is the name, if you know, of Mr. Amengual's
17 company?

18 A East Electric.

19 Q Excuse me?

20 A East Electric.

21 Q Calling your attention to on or about May 9,
22 1975, did you have occasion to be present at a meeting with
23 Mr. Amengual?

24 A Yes. Mr. Sims met me, saw me come in and he
25

rpl5

Cuadrado-direct

asked me to go with him.

I went to Mr. Amengaul with Mr. Sims and when we got there Mr. Sims asked Mr. Amengual for a thousand dollars.

Mr. Amengual told him that he didn't have that amount in cash money, that he would issue two checks.

Mr. Sims say, "You can issue but not in my name. Issue in Mr. Cuadrado's name," and he made two checks of \$500 each on my name.

Signed the two checks, we walked from there across the street to a cashier place where we cashed them there. On my way back with Mr. Sims he gave me \$300.

Q What happened to the other \$700?

A I don't know what he did with it.

Q Mr. Sims had it?

A He had it with him.

Q I show you what has been previously entered as Government's Exhibits 25 and 26, two checks payable to you, and ask if you can identify those checks?

A Yes, these are the two checks and this is my signature on the back.

Q Did you ever have any discussion with Mr. Sims regarding the job that he did for Mr. Amengual or was supposed to do for Mr. Amengual?

A No, sir. I didn't have no discussion with him.

1 Corporation and this meeting, can you tell us first if you
2 recall who was present?

3
4 A It was present myself, Mr. Frank Sims, Mr.
5 Black, Mr. Leon Vega and Mr. Warnell Vega.

6 Q Can you tell us, please, as best you recall what
7 was said at the meeting by anyone that you recall and identify
8 who said it?

9 A We were discussing a demonstration in a site,
10 in a construction site.

11 In the discussion Mr. Black talked about light
12 bulb, and I was amazed because what I know from light bulb
13 is a light, and I said, "What is a light bulb?" He didn't
14 answer.

15 So we finished the meeting later on and every-
16 body walked out.

17 The next day was a demonstration in the site of
18 J.T. Brady located between Home and Tinton Avenue. When
19 we got there, all the demonstrators, everybody, I saw a
20 shanty burning and I met Mr. Black and I asked him, "Is
21 that a light bulb?"

22 He said, "Yes."

23 I said, "You did that?"

24 He said, "Yes, I did it."

25 Q Calling your attention to a demonstration, do

rp

Cuadrado-direct

4095

1 A James Sims.

2 Q Will you please look at the receipt dated both
3 July 6 and June 25, and tell us if your signature is on the
4 back of that one?
5

6 A No, sir.

7 Q What name appears on the back of those checks?

8 A Robert Munoz -- R. Munoz.

9 Q You have seen those before, haven't you?

10 A Yes.

11 Q Some of them do have your name?

12 A Yes.

13 Q Can you tell us, did you give any of those checks
14 in Government's Exhibit 48 to Mr. Sims or Mr. Munoz?

15 A Yes, sometimes I come and give the checks to
16 them to be deposited in the bank.

17 Q Mr. Cuadrado, you have been named as a defendant
18 in the indictment, this indictment that is on trial here?

19 A Yes, sir.

20 Q You have pled guilty to count 1 of this indict-
21 ment, have you not?

22 A Yes, sir.

23 Q That count is a conspiracy count?

24 A Yes, sir.

25 Q You have an understanding with the government,

1 do you not, as to certain representations and promises that
2 were made to you by the government?
3

4 A Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q The government promised they would tell the
8 Judge in the case of your cooperation, did they not?
9

10 A Yes.

11 Q The government promised --

12 MR. THAU: Your Honor, I would like to hear what
13 the promises are from the witness rather than from Mr. Harris.

14 Q What else did the government promise you?

15 A The government promised to drop a case of per-
16 jury, that I won't be prosecuted for taxes, and that they
17 will talk to the Judge when my date of sentence comes up on
18 my behalf.

19 Q Did the government say anything with respect,
20 with regard to the other counts in the indictment here?

21 A Drop all the rest of the counts of the indict-
22 ment.

23 Q This perjury that you spoke of, was that perjury
24 which arose during the investigation of this case?

25 A Yes, sir.

MR. HARRIS: May I have a moment, your Honor?

1
2 since February of this year?

3 A Yes, sir.

4 Q You worked together with Mr. Munoz?

5 A I worked with him, yes.

6 Q Did you know Mr. Munoz in the Hunts Point
7 Community Corporation?

8 A Yes, I do.

9 Q In fact, you worked for the Community Corporation
10 before Mr. Munoz?

11 A I was a director there at the time Mr. Munoz was
12 appointed director. They appoint him director and I
13 oppose that he would be appointed director. I was in good
14 relations that he would be a director there because -- we
15 had an organization, we recommended somebody else for that
16 position.

17 Q You were against Mr. Munoz at that time?

18 A Yes.

19 Q Has Mr. Munoz, at the time he was a director of
20 the Hunts Point Community Corporation, was he a good direct-
21 or?

22 A Yes.

23 Q Did he ever request you to commit any crimes or
24 do anything wrong?

25 A No, sir.

1
2 Q Did he ever ask you to place a bomb?

3 A No.

4 Q Were you ever in any conversation he had or may
5 have had with anybody in this room or anybody in the world
6 where he told --

7 THE COURT: Mr. Richman, you are speaking so
8 fast that the reporter can't get it. Ask him one question
9 at a time, please.

10 MR. THAU: May the witness be directed to wait
11 until Mr. Richman finishes his question before he answers
12 "No" or "Yes"?

13 Q Did Mr. Munoz at any time in your presence
14 discuss with anybody here or with anybody in the world to
15 your knowledge about placing a bomb, starting a fire?

16 A Not that I know of, sir.

17 Q Is it not a fact that when the Black and Puerto
18 Rican Coalition was founded you were one of the members
19 who founded it?

20 A Yes, sir.

21 Q Mr. Munoz was not one of the founding members?

22 A Not at the first time when I found it.

23 Q You came to Mr. Munoz and said to him, "Look,
24 Mr. Munoz, you have space. Can we use the space here at
25 the corporation?"

t-1

1

r-2a

4151

2

THE COURT: All right. Mr. Harris, do you have any objection to the tape?

3

4

MR. HARRIS: Well, I assume the tape is now going to be used to impeach, is that right? It is not going to be offered in evidence at this point, is it? If it is, I certainly object. We want to know when it was made, who made it, where the microphone was.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I have no objection to it being used to impeach in the proper sense: "Mr. Cuadrado, did you say this?" to impeach in the proper sense. I certainly object to the offer now without a voir dire as to the circumstances of the making of that thing.

MR. LEWIS: Your Honor, we only intend to offer the portion that will be used to impeach the witness. At a later time --

THE COURT: What portion?

MR. LEWIS: It's the portion near the end in respect to the perjury, where he said something entirely different on the stand.

MR. HARRIS: Your Honor, I object to any portion of that tape showing where Mr. Sims says how innocent he is and other self-serving statements. If they want to use it to impeach Cuadrado, that's some-

mpa

4155

1
2 THE COURT: Just a minute. The reporter
3 who made the transcription of the testimony of
4 Cuadrado under cross examination by James Sims is on his
5 way up, so we can go over that, exactly what he said,
6 and what this record or tape will be allegedly contradict-
7 ing.

8 MR. GREENFIELD: Could we have the tape
9 played just to show that it was actually said at the
10 beginning? We know what the end is.

11 THE COURT: Well, we have done that.
12 Let's play it again, that part, from beginning to end.

13 (Tape played.)

14 MR. HARRIS: Your Honor, we would like one
15 of the lawyers standing by that shutoff switch to make
16 sure nothing gets in by accident.

17 MR. LEWIS: I suggest Mr. Harris stand
18 there.

19 MR. HARRIS: I don't know how to operate
20 the machine. I think you have the obligation to see
21 that nothing goes wrong.

22 THE COURT: There is an offer from the
23 man who is operating it to show you how to shut it
24 off.

25 MR. HARRIS: No, I just want to make sure

1 mpa Cuadrado-cross 4164
2 Read the question, Mr. Reporter.
3 Listen to the question.
4 (Record read.)
5 A I don't recall having a meeting.
6 MR. THAU: I can't hear.
7 A I don't recall having a meeting with him.
8 I had a meeting with Mr. Munoz. I had a meeting
9 with Mr. Munoz.
10 DEFENDANT JAMES SINS: Can I ask some ques-
11 tions?
12 MR. LEWIS: Your Honor, I --
13 THE COURT: Did you want to ask some
14 questions?
15 MR. LEWIS: No, I just want to assist him.
16 MR. THAU: Your Honor, may I ask for a
17 clarification? When the witness says, "I don't
18 remember having a meeting with him," I would like to
19 know what "him" means.
20 Q Mr. Cuadrado, do you recognize your voice
21 on the tape?
22 A That's what I don't recognize. I don't
23 recognize my voice.
24 Q You don't recognize your voice, and if I
25 played it again, would that help refresh your memory?

mpa

Cuadrado-cross

4165

A You can play it again.

(Tape played.)

BY DEFENDANT JAMES SIMS:

Q Mr. Cuadrado, is it your testimony that that is not your tape -- that that is not your voice on the tape?

A That's my testimony: that is not my voice on that tape.

DEFENDANT JAMES SIMS: Your Honor, I have no further questions.

(Pause.)

DEFENDANT JAMES SIMS: I am sorry, your Honor. May I continue?

THE COURT: Yes.

Q Well, Mr. Cuadrado, do you recall the date that you last testified in front of the grand jury?

A No, I don't remember the date.

DEFENDANT JAMES SIMS: Mr. Harris, would you stipulate that it was October 10, 1974?

MR. HARRIS: Yes, Mr. Sims.

DEFENDANT JAMES SIMS: Thank you.

Q Mr. Cuadrado, isn't it a fact that you were found guilty of shooting a police officer?

A If I was found guilty?

rp2

Cuadrado-cross

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q "I got the same charts you got here"?

A Yes, sir.

Q This, of course, was referring to charts which they had as they were talking to you, is that right?

A Did I answer they may have one or two?

Q But you weren't certain whether they did?

A But I answer.

Q That settles it they had charts?

A If they had one or two charts.

Q Mr. Cuadrado, you told us before the break that Cleo Williams had something about light bulbs in your company and the company of several others, is that right?

A Yes, sir, I say that.

Q This was some time in April of some year?

A I can't remember the date, sir.

Q When is the last time you have seen Leon Vega?

A Leon Vega, I haven't seen him in the last five or six months, sir.

Q Cleo is the only one who spoke of light bulbs?

A On that meeting, yes.

Q You didn't know what meant?

A No, the only thing I know about light bulbs when you put a bulb in a light.

Q You asked Cleo, "What are you talking about?"?

rp7

Cuadrado-cross

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Bob Munoz was the boss in that corporation, right?

A He was the executive director of Hunts Point Corporation at that time.

Q He was also on the council of the Coalition?

A He was a treasurer of the Black and Puerto Rican Coalition.

Q When, as you say, Cleo Williams told you what a light bulb was all about, you immediately went right to Bob Munoz and said, "Bob, what are they doing under your very roof?"

A I have to run to Bob Munoz and tell him that? *

Q I am sorry?

A Did I run to him and say, "Look here," --

Q You didn't tell him?

A No, I didn't say nothing.

Q You didn't?

A No, I didn't say nothing to Bob Munoz, nothing.

Q Here were these guys plotting destruction under your very roof, isn't that right?

A They was, I was there.

Q But you hadn't done anything?

A I haven't done anything but being in the meeting when they discussed to do that. Where there was discussion on that.

rp8

Cuadrado-cross

Q You didn't consult with Nelson Zapata what your liability was before you decided not to tell Bob Munoz about this?

A Why should I have to tell Bob Munoz? Is he my father or something? I told Bob Munoz nothing.

Q Were you working for him?

A That doesn't matter that I work for him. I have to run like he is my father everytime?

Q He was your friend?

A He was my boss. He was the one who signed my check working there five days each week and every week.

Q You call him Bob or Mr. Munoz?

A I call him Bob, I call him Mr. Munoz, either of the two names.

Q Tell me, sir, is it after you consulted with counsel that you realized that your mere presence at a gathering was a crime or was it your immediate conclusion that it was a crime for you to have been there?

A I took the plea --

Q No, no. That is not what I am asking you.

When you learned of the fire and were upset, was it your impression that you were guilty of a crime for having sat the day before with other people?

A In my conscience, yes.

195a

mpa31

Cuadrado-cross

are coming close to that situation.

THE COURT : Approach the bench.

(In the robing room.)

THE COURT: Now, Mr. Greenfield, I think this is beating a dead horse. I think this jury is convinced that this witness is not to be believed with respect to anything he says.

MR. GREENFIELD: Your Honor, if I can get a statement from the government that they will withdraw his testimony and make a statement on the record that they agree with the court, I won't question it. I almost agree with the court on that, your Honor, but I have some areas I have to go into, and if there's some representation that his testimony be stricken and that he is to be considered a nonentity in their mind -- I don't even know how far to go, your Honor --

THE COURT: You are prolonging this proceeding to try to convince the jury that this man is not to be believed. Now, there ought to be an end to this. I am sure the jury is convinced that his testimony isn't worth anything.

MR. GREENFIELD: Will your Honor during that charge make that statement to the jury?

THE COURT: Yes, I will give them my view

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And he is a friend of yours?

A No, sir, I didn't tell you that.

Q Now, you were an employee of the Hunts Point Corporation and you knew that people were planting bombs and burning?

A I find that after fact, sir.

Q Did you ever discuss it with Mr. Munoz?

A No, sir.

Q Did you ever hear anyone discuss it in his presence?

A Not that I know of.

Q You mean Mr. Jackson, Mr. Williams, Mr. Sims discussed it in your presence, but you never heard --

A No, they told me. They don't discuss. They told me.

Q They told you in your presence, but you never heard them mention it in Mr. Munoz' presence?

A No, to be honest with you. If I say to you I have, I am lying to you, sir.

Q Did you ever discuss it with Mr. Munoz?

A No, sir.

Q Now, you made this trip from New Jersey to meet Mr. Richman and Mr. Munoz a couple of hours after I finished interviewing you?

A About three hours, sir.

1 rp5

197a Cuadrado-redirect

2 THE COURT: To what?

3 MR. RICHMAN: To talk to a witness with their
4 permission.5 THE COURT: I think I told that to the jury
6 a few days ago.

7 MR. RICHMAN: Very well.

8 Will the government stipulate that I made a
9 request to Mr. Harris for all the witnesses, that I can
10 examine?11 MR. HARRIS: Your Honor, I will stipulate when
12 Mr. Richman made that request I told him that Mr. Cuadrado
13 worked for his client and he could get to him easier than .
14 I could.

15 MR. RICHMAN: Thank you, your Honor.

16 Q Now, Mr. Cuadrado --

17 A Yes, sir.

18 Q -- when you met with Mr. Munoz it is your testi-
19 mony you had no discussion with him about your testimony,
20 what your testimony would be and what you and I discussed?

21 A No.

22 Q Yet you thought it was a crime to meet with him?

23 A I thought it was a crime.

24 Q What crime did you think it was?

25 A Well, you know, let me tell you. I ask him,

rp8

198a Cuadrado-recross

1

2

Q A Spanish gentleman with a mustache?

3

A Yes.

4

Q And you came over?

5

A Yes, with Mr. Munoz.

6

Q With Mr. Munoz. I introduced myself?

7

A Yes.

8

Q I said to you, the very first words, "Mr.

9

Cuadrado, you don't have to talk to me," isn't that a fact?

10

A Yes.

11

Q And that the second words I said, "Mr. Cuadrado,

12

you are a witness for the government, are you not?"

13

A Yes.

14

Q And I said, "You are going to make it known to

15

the government that you spoke to me or should make it known?"

16

A Yes.

17

Q Isn't that a fact?

18

A Yes.

19

Q Then didn't I first show you an array of pictures,

20

maybe 40 or 50?

21

A Yes.

22

Q You identified various persons to me?

23

A Yes.

24

Q Pick yourself out in the pictures?

25

A My picture was there.

rp9 199a Cuadrado-recross

2 Q Did I tell you anything more to say?

3 A No.

4 Q Did I tell you to make reference to the fact that
5 you spoke to anybody else such as Mr. Mohan or police
6 officers?

7 A No.

8 Q Did I make any allegation or any statement
9 concerning anything else you testified about?

10 A No, sir.

11 Q Did I ask you specifically about this person
12 Fruto Alicea?

13 A Yes.

14 Q Specifically what you did for him?

15 A Yes, sir.

16 Q Did I ask you specifically about Fernandez?

17 A Yes.

18 Q Did I ask you what you knew about her?

19 A Yes.

20 Q Did I tell you that she was on the stand today --
21 that day, whatever the day?

22 A The other day, the next day.

23 Q She was on that following day and wanted some
24 information so I can cross-examine her?

25 A That is what you asked me, what type of person

1
2 A Yes.

3 Q Then you left before you had to go and grab
4 a bus back to New Jersey, catch a bus?

5 A Yes.

6 Q And that bus leaves approximately --

7 A 12.05.

8 Q But you left my presence approximately 10.20,
9 10.30, to make that last bus?

10 A Yes, sir.

11 Q Isn't that restaurant we were in in the Throggs
12 Neck section of the Bronx?

13 A It is around Throggs Neck, but near Tremont, all
14 the way up.

15 Q I was saying 3599 East Tremont Avenue.

16 A Yes.

17 Q Isn't that a fact?

18 A I don't know the address. I know it was
19 Tremont and it was a restaurant.

20 MR. RICHMAN: No further questions.

21 THE COURT: Anything further?

22 MR. RICHMAN: If your Honor please, may I have
23 a stipulation on the record from the government that each
24 and every one of the government witnesses I specifically
25 requested to interview and specifically as to Estelle

1 it imply that no other lawyer tried to and Munoz'
2 lawyer tried to speak to him.

3 It must be pointed out at this time, your
4 Honor, that this issue I consider to be a substantial
5 error if it were to be allowed and at this time I move
6 for a mistrial. The government knew long before
7 this man testified what he would be testifying to.
8 In fact, more than a year concerning the start of this
9 trial, the tapes involving Mr. Cuadrado -- and I never
10 spoke to this man before he appeared here -- clearly
11 exonerated Mr. Munoz. So the government implied that
12 we had placed the words in Mr. Cuadrado's mouth.

13 THE COURT: This was before the grand
14 jury?
15

16 MR. RICHMAN: Before the grand jury and
17 even before he went before the grand jury, in certain
18 tapes that were given over to us.

19 Now to claim, to come before the court and
20 feign surprise that this man testified in this manner
21 and then point the finger at me as if I set him up to
22 testify in that manner is such error, and it now intro-
23 duces into the trial my honesty, my integrity and my
24 credibility.

25 Now, unless your Honor wishes to give me

1 mpa
2 the opportunity to introduce character witnesses for
3 me, which your Honor can't do, since I am not on
4 trial, the government has so tainted Mr. Munoz' case
5 as to deprive him of any possibility of a fair trial.
6 They knew what was going to be said. They vouch for
7 his honesty.

8 THE COURT: Mr. Harris, do you want to
9 reply to that?

10 MR. HARRIS: Well, I don't really think
11 a reply is necessary. The government was trying to
12 bring out Mr. Cuadrado's bias and motive for testifying.
13 The evidence shows that he was willing to go from his
14 home and meet Mr. Munoz in the Bronx at considerable
15 time, and he had to do it by Luses.

16 Considering the fact that this witness
17 exonerated Mr. Munoz, the government has a right to
18 show what motive he had, and I think Mr. Richman is
19 being a little oversensitive about that.

20 THE COURT: Yes, I think so, Mr. Richman.
21 The government has a right to show that the witness
22 Cuadrado perhaps had a motive for testifying falsely,
23 the strongest of which is that he is still employed
24 by Mr. Munoz, if I understood his testimony, that he
25 had been employed by Mr. Munoz in his position several

mpa

Dudonis-cross

4636

that there was no thread or cardboard found in it.

MR. HARRIS: Your Honor, the record speaks for itself.

MR. RICEMAN: He doesn't know the testimony.

THE COURT: What is this?

Q Mr. Dudonis, assuming that was the contents of the bomb, of this device --

A Yes.

Q -- with the exception of the fact that that appears to be an aluminum casing, would you say they were made by different people than the bombs that you found?

A With respect to the other contents, the components are different than the other ones.

Q They are different?

A The components are different except for the aluminum pipe.

Q Now, with relation to the aluminum pipe, you testified before the grand jury on December 19, 1973, sir?

A Yes.

Q Did you ever testify that that was galvanized pipe?

1
2 A Apparently I had testified that that was
3 galvanized pipe. When I made the examination it was
4 in a sealed bag and I didn't open the bag. made
5 the examination through a sealed bag.

6 Q And that appeared to be galvanized pipe?

7 A At that time it appeared to be galvanized,
8 since I never came across an aluminum pipe.

9 Q Up to that time, that is?

10 A Yes.

11 Q You hadn't come across any aluminum pipe?

12 A When I first examined that device, I hadn't
13 examined any other --

14 Q I am sorry, sir. The devices you referred
15 to earlier, weren't they found before December 19, 1973?

16 A Yes.

17 Q So you did have contact with aluminum
18 pipe, if they were?

19 A Oh, yes. Prior to December 19th.

20 Q Now, on December 19th you testified, did
21 you not, that that was galvanized pipe?

22 A Yes.

23 Q Not that I would know the difference, mind
24 you, but you did testify --

25 A No, I did testify that that was galvanized

1 mpa

2 pipe.

3 Q Now, I call your attention to -- I am
4 sorry. We don't have anything else to talk about
5 here, right?

6 Would you take a look at this, referring
7 now to Government's Exhibit 50. That appears to be
8 an exploded device, does it not?

9 A Yes.

10 Q And will you take a look at that and tell
11 me what metal that is made out of?

12 A That's an aluminum, too.

13 Q You examined that also and you testified
14 before the grand jury?

15 A Yes.

16 Q And you testified that that was galvanized
17 pipe?

18 A Yes.

19 Q You were mistaken?

20 A When I examined the pipe, it was in a --
21 the first time I examined these two particular pipes
22 they were in sealed plastic containers and they appeared
23 at that time to be galvanized. That's what I stated
24 in the grand jury.

25 Q You made a mistake before the grand jury?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A On further examination I --

Q Now, with relation to those other three devices which you found, you said there was a threaded nipple?

A In the interior, yes.

Q And you said that that was most probably used for the purpose of shrapnel?

A Fragmentation.

Q Did you have a chance to discuss this with your brother officers who testified here earlier?

A Yes, we talked about it.

Q And you came to the conclusion yourselves that that was the purpose for that object?

A Yes.

Q And, frankly speaking, that item wouldn't have broken apart or shredded on an explosion, would it?

A Could have.

Q Could have, but probably wouldn't have, isn't that a fact?

A No, I wouldn't say that.

Q No, you wouldn't say that?

A No, I wouldn't say that it wouldn't break apart.

mpa

Beatus-cross

4669

1 knowledge that this bomb or the bombs or powder that
2 you analyzed, whether they had anything to do with this
3 particular case?
4

5 A I only know that they were submitted by
6 detectives in the Bomb Squad for my analysis under
7 certain departmental procedures.

8 Q But you don't have any personal knowledge
9 of what went on with relation to these items?

10 A Only as far as the evidential chain, where
11 it reached me.

12 Q You mean where you received it and gave
13 it back?

14 A Yes.

15 Q Now, do I understand you to say that there
16 were three different powders, three different smokeless
17 powders, involved, two different types of du Pont
18 and one Herco?

19 A I don't recall the exact number. I know
20 I identified in some of the cases -- I was able to
21 identify the manufacturer of the particular powder.
22 In one case there were two separate, two different
23 kinds of powder. I don't recall the exact number
24 as far as how many cases I actually identified powder
25 or how many different powders there were.

t2

1

mpal

Feinberg-direct

2634

2

MR. HARRIS: Your Honor, I thought the

3

point of this hearing was Mr. Feinberg's state of mind

4

and intention in putting the witness in the grand jury.

5

I don't see why Mohan and Cummings are to be excluded

6

from this hearing.

7

MR. ROSENBAUM: Your Honor, we do not

8

know what kind of testimony may come out.

9

THE COURT: Yes, proceed.

10

A I received a telephone call and was advised

11

that they had met with a Fruto Alicea and that Mr.

12

Alicea had provided some testimony or evidence concern-

13

ing the investigation.

14

Q And when you got back to work on December

15

2nd, Monday, did there come a time that week when you

16

met Fruto Alicea?

17

A Yes. Early in that week -- whether it

18

was Tuesday or Wednesday, I'm not absolutely sure, but

19

Mr. Alicea was brought in to see me the 3rd or 4th of

20

December.

21

Q Now, at the time that you met Mr. Alicea,

22

did the name Migdalia Ortiz come up?

23

A Yes, for the first time when -- well the

24

name did come up when I spoke with Mr. Alicea in my

25

office on the 4th or the 3rd, whenever it was.

mpa2

Feinberg-direct

2635

1 Q And what reference, if you can recall, was
2 made to Miss Ortiz at that time?
3

4 A Mr. Alicea informed me that Miss Ortiz was
5 the mother of a child of which James Sims was the
6 father, and that she might have some information about
7 persons involved in the investigation and the bombings.
8

9 Q Now, calling your attention to approximately
10 December 5, 1974, Thursday, did you have occasion
11 to put Mr. Alicea in the grand jury?
12

13 A Yes, I put him in the next day after I spoke
14 to him.
15

16 Q Calling your attention to the day after Mr.
17 Alicea was in the grand jury, namely, Friday, December
18 6th, did you have occasion to learn about the fact
19 that Mr. Alicea was to be equipped with a tape recorder
20 and sent back into the field?
21

22 A Well, absolutely. As part of Mr. Alicea's
23 agreement to cooperate, he agreed that he would be
24 wired and put back in circulation, so to speak.
25

26 Q Did you find out about the results of the
27 effort to make the tape recording on the day that Mr.
28 Alicea was wired, namely Friday, December 6th?
29

30 A I don't remember whether it was that day
31 or soon thereafter, but the results weren't beneficial.
32

1 mpa Feinberg-direct 2639
2 indictment, namely, December 11th, you thereafter did
3 put Miss Ortiz in the grand jury, on December 27th, is
4 that correct?

5 A That is correct. Not the same grand jury.
6 A different grand jury. The original grand jury had
7 expired prior to that.

8 Q Now, between the period of December 11th
9 and December 27th, was there a reason that that period
10 of time elapsed prior to putting Miss Ortiz in the
11 grand jury?

12 A Yes, there was.

13 Q Will you tell us what that was?

14 A The grand jury indicted on December 11th.
15 For a week or even eight or nine days thereafter, the
16 United States Attorney's Office was concerned with de-
17 briefing extensively Mr. Alicea to determine -- to
18 fill in gaps and determine just how much Mr. Alicea
19 could tell us.

From the 11th right up until the 18th or 19th of December, as I recall, Mr. Alicea spent time with myself and even more time with Mr. Cummings and Mr. Mohan and Mr. Markowski actually traveling to the different locations, construction sites and areas of bombings and arsons in an effort to pin down Mr. Alicea's

1 mpa Feinberg-direct 2640

2 knowledge and the testimony that he could provide us

3 with regards to these extortionate acts that were in

4 the indictment.

5 Q Now, during that period of time were there

6 any leads that you were pursuing in this investigation?

7 A Absolutely. Mr. --

8 Q Now, without giving us names, please tell

9 us what those leads were.

10 A Well, Mr. Alicea had given us information

11 about other various individuals who had been targets

12 of our investigation for upwards of a year, and in addi-

13 tion to Mr. Alicea taking us to these various construction

14 sites, we also -- when I say "we," the agents -- were

15 checking out leads concerning other people who were

16 under investigation but who had not yet been in-

17 dicted.

18 Q Now, on December 27th, did you put Miss Or-

19 tiz in the grand jury?

20 A That is correct.

21 Q If you recall, would you tell us why you

22 decided, among the leads Alicea had given us, to put

23 Miss Ortiz in the grand jury?

24 A Yes. We knew about these other individuals

25 for over a year. In fact, many of them had testified

mpa
Feinberg-direct
2641

in the grand jury. Miss Ortiz was an absolutely new name, a name that had never cropped up or come up during the course of the investigation. It was decided that we would put Miss Ortiz in the grand jury in the hopes that two things would occur: One, that she would be able to provide us with evidence concerning other individuals who had been under investigation who had not yet been indicted as part of an ongoing investigation and that, two, Miss Ortiz might also give testimony similar to that which Mr. Alicea had given, that she, too, had been the victim of an obstruction of justice by Mr. Munoz, Mr. James Sims and others.

14 Part of the superseding indictment had
15 been that Mr. Alicea had been obstructed by certain
16 named defendants, and we wanted to find out from Miss
17 Ortiz whether she had been obstructed by defendants in
18 the course of the investigation.

19 Q In any event, calling your attention to
20 the date of December 27th, did you put Miss Ortiz before
21 a federal grand jury?

22 A I did. I think it was the December
23 regular grand jury sitting in this courthouse on that
24 day.

25 Q And will you tell us the circumstances

mpa

Feinberg-direct

2642

1 surrounding that appearance: First, prior to going
2 into the grand jury, did you have an opportunity
3 to talk to Miss Ortiz?
4

5 A I think I spoke to Miss Ortiz for no more
6 than two or three minutes before she went into the
7 grand jury, just to explain to her that questions
8 would be asked.

9 Q Did you go into the substance of any of your
10 questions?

11 A No.

12 Q Now, when Miss Ortiz did appear in the grand
13 jury, was she a target of that investigation?

14 A No, she was not and that was told to her,
15 that she wasn't a target, that she was purely a
16 witness.

17 Q Now, did there come a time during her tes-
18 timony, after some introductory warnings and intro-
19 ductory questions, in which she expressed a desire to
20 refuse to answer based on her Fifth Amendment privi-
21 lege --

22 A Yes, she did.

23 Q And did there thereafter come a time in
24 which you explained to her that it was personal to
25 her, the Fifth Amendment, and that under the circum-

mpa

Feinberg-direct

2643

stances unless she felt the answers incriminated her she could not assert that privilege?

A Yes, I did.

Q And did she thereafter answer some questions?

A Yes, she did.

Q Now, as to the questions that you posed to her, these questions related to defendants already under indictment, did they not?

A That is correct.

Q And will you explain to us why you posed those particular questions which appear in the transcript?

A Of course. As I have already testified, Miss Ortiz was an unknown quantity. We hadn't, either myself or anybody else, as far as I had known, ever spoken to Miss Ortiz about the nature of her cooperation, whether she would cooperate. We had no idea of what Miss Ortiz would say in the grand jury.

The questions that I posed to Miss Ortiz were preliminary questions designed to elicit from her knowledge -- designed to determine -- excuse me, Mr. Reporter -- designed to determine whether or not she was telling the truth and was going to be a truthful

mpa

Feinberg-direct

2644

1 witness before the grand jury. The questions that
2 I posed to her were not the subject of her appear-
3 ance; they were merely questions to determine whether
4 or not she would be candid and truthful with the grand
5 jury.
6

7 Q Now, after Miss Ortiz began answering
8 those questions, did you make in your own mind a
9 determination about whether she was or wasn't being
10 truthful?

11 A Yes, I did.

12 Q And what determination did you make?

13 A I determined that Miss Ortiz -- and this
14 whole proceeding couldn't have taken more than 10 or
15 15 minutes -- I determined that Miss Ortiz wasn't
16 being truthful and had actually lied under oath, on the
17 basis of the information currently in our possession
18 that we had elicited from Mr. Alicea.

19 Q Now, after you made that determination
20 by the series of questions in the transcript, did you
21 decide not to ask her any exploratory questions?

22 A Absolutely. There would be no point, in
23 my view, to ask Miss Ortiz any questions relating to
24 an ongoing investigation, because, one, she had just
25 committed perjury before the grand jury, and in that

1 rp5

Feinberg-cross

2 on December 11, I ask you what difference does it make
3 whether you go to --

4 Q That is the point, Mr. Feinberg, it does make a
5 difference.

6 A A calculated decision was --

7 THE COURT: All right, Mr. Feinberg, there is
8 no question before you.

9 Q You took her before a different grand jury
10 entirely, one started December 27?

11 A That is correct.

12 Q Why didn't you take her before the same jury
13 one day earlier, the 26th?

14 A You are asking a question, the decision was made
15 that we would start to investigate Miss Ortiz on December
16 27. What grand jury was going to be used wasn't a factor
17 in that decision.

18 Q In fact, the thought didn't occur to you to
19 put her before this same grand jury, is that right?

20 A That thought occurred to me.

21 Q But you didn't think it important?

22 A There were other important matters.

23 Q Other things to do?

24 A That is right, and that grand jury only sat
25 once or twice a week. There was a problem of scheduling.

rpl0

Feinberg-cross

1

2

A I wasn't occupied driving him around.

3

3

Q So you had time to look into, to speak to Miss Ortiz?

4

5

A I didn't have time to speak to Miss Ortiz at that time.

6

7

Q You were doing other things?

8

A That is right.

9

Q When did it become your object, shall we say,

10

to bring Miss Ortiz down to the grand jury?

11

A I don't recall the exact date that the subpoena was issued.

12

13

Q How many days before she actually appeared?

14

MR. HARRIS: He was in the middle of the answer.

15

A I am not sure. I would say that that subpoena was probably issued the day before or the same day, but I am not sure about that.

17

18

Q The same day she was to come down a subpoena was issued?

19

20

A It may have been a forthwith subpoena, I am not sure about that, Mr. Richman.

21

22

Q What was the purpose of that?

23

A I am not sure if that was the case. I have difficulty recalling when she was asked to appear.

24

25

Q Can we have a copy of the subpoena?

mpa7

Feinberg-cross

2671

Honor. Now we have a situation where they go into details, which is an effort to preserve testimony.

THE COURT: You have already put that in the record. Now you are arguing.

MR. RICHMAN: The minutes speak for themselves.

MR. HARRIS: That was the purpose of my objection.

THE COURT: Yes.

MR. RICHMAN: That's the only point I wanted to make, your Honor. I have nothing further.

THE COURT: All right, Mr. Lewis, do you have any questions?

MR. LEWIS: Yes, your Honor.

CROSS EXAMINATION

BY MR. LEWIS:

Q Mr. Feinberg, you are aware of the purpose of this hearing, are you not?

A I am what?

Q You are aware of the purpose of this hearing?

A I have been told why I should testify or why I should have to testify. I don't know if that's the purpose.

Q As a former assistant United States attorney

mpa8

Feinberg-cross

2672

1 in this district, is it fair to state that you are
2 aware of the Second Circuit's admonition to the U. S.
3 Attorney's Office about using a grand jury to freeze
4 testimony after --
5

6 A Oh, I am aware of the admonition of the
7 Second Circuit not to freeze testimony, yes.

8 Q On a post-indictment basis?

9 A To freeze testimony. I am aware of
10 that admonition, yes.

11 Q Is it a fact that it is not necessary to
12 put a witness before a grand jury and still use her for
13 trial testimony? Isn't that true?

14 A You mean in terms of the admonition?

15 Q Yes -- no. Another question. A witness
16 can be brought in to testify at a trial, a criminal
17 trial. There's no requirement that he or they be be-
18 fore a grand jury prior thereto, is that a fact?

19 A Sure.

20 Q So in this case it could well have been that
21 your agents could have interviewed her outside the
22 grand jury, isn't that true

23 A Agents could have.

24 Q And if she had been cooperative with the
25 agents, you could have used her testimony in this trial?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A That's one way you could have done it, yes.

Q Right, and there's no legal imperfection in that procedure.

A There's no legal imperfection in either procedure.

Q That's the purpose of this hearing?

A Well, Mr. Lewis, certainly there's no charge that there was any frozen testimony in the first appearance. I didn't even know what the woman would say. How could I have frozen testimony? I didn't even know what the woman would do before the grand jury.

Q That's for Judge Motley to decide.

A I am sorry.

Q When she appeared for the first time before the grand jury, did you give the standard so-called Mirand. warning?

A No.

Q You did not?

A No.

Q What type of warning, if you recall, did you give her?

A I told her that she had a Fifth Amendment privilege, that she had a right to an attorney, that anything that she said could be used against her, and

1
2 MR. HAGEN: Your Honor, when I made this
3 original motion, and Mr. Feinberg gave me a sentence
4 that I can use, "I didn't put perjury in the mouth of
5 the witness," but by his actions he forced her to
6 answer questions that she did not want to answer.
7 She took the Fifth Amendment about seven times and he
8 continued by his actions in the grand jury --

9 THE COURT: Well, we have to determine
10 that from the grand jury record.

11 MR. HAGEN: I am asking him now --

12 THE COURT: We have to determine that
13 from looking at the record as it stands.

14 MR. HAGEN: I am going to draw attention
15 to certain parts of this record, if I might, your Honor,
16 to show how he bullied this witness into answering ques-
17 tions she never wanted to answer.

18 MR. HARRIS: Your Honor, the transcripts
19 of the two proceedings have been marked as court
20 exhibits. They speak for themselves.

21 MR. HAGEN: I am entitled to point out
22 that the transcripts make the point I am trying to
23 make.

24 THE COURT: Well, you go argue that to
25 me. You can point out to me that a question was put

1 rp15

Feinberg-cross

2 reluctance to testify in my office or willingness to testify
3 in my office.

4 I just felt it better in this case where an
5 obstruction of justice was so a part of the case, to place
6 her in the grand jury.

7 Q Your office was on the third or fourth floor
8 of this building and the grand jury is on the 14th floor of
9 the very same building?

10 A That is right.

11 Q How often in your career as a Federal prosecutor
12 have you brought a witness before a grand jury without
13 first interviewing that witness?

14 A It has happened on occasions; not frequently.

15 Q It is uncommon?

16 A Rather uncommon but certainly not a first im-
17 pression situation.

18 Q Now, you would have charged Migdalia Ortiz for
19 having made false declarations to a grand jury had she not
20 recanted in January, is that right?

21 A My present recollection is I would have absent
22 the recantation, yes.

23 Q But in fact the first time you put her before a
24 grand jury was not so much to present evidence to the grand
25 jury, I believe you told us, but principally to find out

mpal4

Feinberg-cross

2733

1
2 Q Your initially stated intention was to gain
3 new information?

4 A Hopefully, new information about targets
5 of a year's standing.

6 Q And yet when put before the grand jury, under
7 oath, a relatively unknown witness is not asked the
8 same questions you asked her the first time?

9 A It was a recantation the second time. Of
10 course I didn't ask her the second time.

11 Q Can a recantation be accomplished by affi-
12 davit?

13 A Yes.

14 Q Wouldn't it have been sufficient to have her
15 recant by affidavit?

16 A I could have asked her the same questions,
17 of course. This was just as easy and in fact more
18 proper to put her before the same grand jury where she had
19 lied a couple of days earlier.

20 Q And absolutely, and for other purpose --
21 well, not even that -- it did happen to preserve her
22 testimony for this trial, isn't that right?

23 A Of course!

24 MR. GREENFIELD: No further questions.
25

MEMORANDUM IN SUPPORT OF RULE 29 MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

162
No. 74 Cr. (CJM)

ROBERT MUNOZ, and JAMES SIMS,

Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS ROBERT
MUNOZ AND JAMES SIMS' MOTION FOR JUDGMENT
OF ACQUITTAL, OR IN THE ALTERNATIVE, FOR
A NEW TRIAL PURSUANT TO RULE 29 OF THE
FEDERAL RULES OF CRIMINAL PROCEDURE.

PRELIMINARY

During the trial of the above case, several motions were made and joined in by all the defendants for a directed verdict of acquittal or mistrial on the grounds of gross prosecutorial misconduct as well as serious acts of bad faith on the part of the prosecutor. This memorandum is in support of such oral motions made during the course of the trial.

I

PROSECUTION IS GUILTY OF SUBORNATION
OF PERJURY

The Government called the witness Carlos Caudrado, although they were well aware that his testimony would be perjurious. Moreover, the Government chose not to advise the Court that this witness would testify falsely, as they did in the case of the witness Sam Amenguel.

Had not defense counsel vigorously destroyed his testimony, the fact that he was committing perjury would never have come to light.

Title 18 USC 1622 provides that "whoever procures another to commit any perjury is guilty of subornation of perjury * * * ". One of the elements of subornation of perjury is that the suborner must know or believe that the testimony of a witness about to be given will be false, and further, have knowledge that the witness is knowingly testifying falsely. See Boren v. U.S. 144 F. 801. The actions of the prosecution in this regard are in clear violation of the subornation of perjury statute and had it been defense counsel who had acted in this fashion, indictment and prosecution would have followed swiftly. But who is to prosecute the prosecutor?

It is apparent that the United States Court of Appeals for the Second Circuit recognized this factor in their recent decision of Washington v. Vincent, decided on November 5, 1975, and reported in the Criminal Law Reporter, Vol. 18, P.2221. In that case Chief Judge Kaufman held that where a prosecutor stands silently by while a crucial witness perjures himself, and the prosecution knows that his testimony is perjured, would constitute a fatal error.

The Government may not now argue that they introduced this perjured witness (Cuadrado) for other purposes especially when they failed to advise the Court and/or defense counsel as to their knowledge that such a witness would commit perjury.

II

USE OF GRAND JURY POST-INDICTMENT
FOR SOLE OR DOMINATING PURPOSE OF
FREEZING TESTIMONY CONSTITUTES
PROSECUTORIAL MISCONDUCT

In the case of the witnesses, Ortiz and Vega, the prosecution called these witness before a subsequent Grand Jury, other than the Grand Jury that returned the within indictment. A review of the Grand Jury testimony of these two witness clearly indicates that the prosecution had no other purpose in mind other than freezing their testimony. Under U.S. vs. Dardi, 330 F.2d, 316(2d. Cir 1964) such practice by the prosecution was condemned. Justice Steward, in his dissent in Branzburg vs. Hayes, 408 US at 747-48, cited Dardi for the authority that a charge subsequent to an indictment could not be investigated by a Grand Jury.

The misuse of the Grand Jury by the prosecution was more fully argued during the course of the trial and counsel has previously submitted memorandums in support of their contentions.

III

PROSECUTION IMPROPERLY ACCUSED COUNSEL
FOR THE DEFENDANT MUNOZ IN FRONT OF THE
JURY

Accusations in front of the jury by the prosecution that the defendant and his attorney had improperly met with Caudrado the night previous to his testifying and some how arranged the answers to the questions, knowing full well that the answers given by the government witness, Caudrado were the same answers he had given to a debriefing approximately one year earlier and to the Grand Jury some 16 months

earlier, thereby raising the inference in the minds of the jury that Caudrado's testimony was a recent fabrication, and then later stipulating that his testimony on trial was essentially the same as had been previously given.

IV

SOLE CONCERN OF THE PROSECUTION
WAS THE DEFENDANT ROBERT MUNOZ

It was clear from the outset of this case that the thrust and the sole interest and concern was the defendant Robert Munoz. Through testimony and statements it became obvious that the Government was desirous of securing a conviction not just of the crime charged but for anything as against Robert Munoz. Statements were made to other counsel as more fully amplified in the record by Mr. Thau indicating that they were not interested in anyone else other than Munoz clearly indicates further misuse of the judicial proceedings. Substantial money offers were made to all witnesses to testify against Munoz and even prior to the occurrence of the charges in the indictment it appeared that the Government and its representatives had approached one of the witnesses, Estelle Fernandez, in order to get Munoz. It became apparent that Mr. Munoz, in the eyes of the Government, was a defendant in search of a case and that the thrust of any investigation was to get Munoz rather than uncover the truth, and was an abuse of prosecutorial discretion.

Of course, this strong thrust at the defendant Munoz had its spill-over effect as to defendant James Sims. The Government levelled its guns at Sims by means of a mass of testimony to get through to Munoz.

The net result was a jury compromise and hence the guilty verdict as to Count I in respect to both defendants.

V

PROSECUTION MADE IMPROPER PAYMENTS TO
THE WITNESSES, ALICEA AND ORTIZ, AND
PROMISES OF PAYMENTS TO THE WITNESS
FERNANDEZ.

18 USC 201(h) provides that "whoever directly or indirectly, gives, offers or promises anything of value to any person for or because of testimony under oath or affirmation given or to be given by such person as a witness upon a trial * * * " is guilty of a felony. In the case at bar, the witnesses, Alicea, Ortiz and Fernandez received substantial amounts of money and other things of value or promises therefor from the Government. The Government maintains that this was done under the authority of the Witness Protection Program (Public Law 91-452 - Title V). However, it seems clear that the Government misused this Program and made these offers of money and things of value to induce such witnesses to testify in its behalf rather than in furtherance of the purpose of such Program, which is to provide for the safety of such witnesses. The fact that there was no danger to the witnesses became crystal clear when the Government saw fit to send the witness, Alicea, to the Bronx (the very area where his alleged safety would be in most jeopardy) to inform the witness, Ortiz, that there had been a change of prosecutors in the case, and otherwise permitted him freely to visit in the Bronx. Also, the witness Caudrado, who testified for the Government (with such knowledge in the possession of the defendants) was never in jeopardy, and, in fact, was working at the S.E.R.A. Program openly and overtly both

before and after his testimony.

In effect, the Government bought testimony of the witnesses, Alicea, Ortiz and Fernandez, and attempts to shield this payoff behind the Witness Protection Program, when, in fact, such witnesses were never in peril or danger whatsoever. Again, if such acts had been committed by defense counsel, indictment and prosecution would have been swift and sure.

The Government had a second motive in placing such witnesses in a Protective Program. They were able to create an aura of fear in the Courtroom and thereby infer to the jury and the Court that the defendants were persons prone to violence. In fact, during the course of the trial, one of the prosecutors stated that some person had followed the mother of the witness Ortiz to the witnesses' house and that an arrest followed. Investigation by counsel, however, indicated that there was no such arrest. The Government, in this respect, had promised to submit an affidavit or proof thereof, but to the knowledge of counsel, this was never done.

Again this is clear evidence of bad faith on the part of the prosecution.

VI

TESTIMONY OF MAJOR WITNESSES BEFORE THE GRAND JURY WAS ALMOST ENTIRELY BY LEADING QUESTIONS.

It became apparent when the Government produced the "inside" witnesses Grand Jury testimony pursuant to Rule 3500, that the Government's presentation of its case to the Grand Jury was on the basis of

leading questions. In fact, the prosecutor put the words into the mouth of the witnesses to solicit "yes" answers. The net effect of this was, of course, that the Assistant United States Attorney was the one testifying to the Grand Jury. It has been held that the purpose of a Grand Jury's inquiry is to get at facts which will enable it to determine whether formal charges should be made against someone. See Dolan vs. U.S. (C.A. Mo. 1955) 218 F.2d 454, Cert. den. 349 U.S. 923. In the case at bar, it is clear that the Grand Jury was not permitted to function in accordance with the above stated purpose. It became a prosecutor's tool to get the prosecution's view of the case to the Grand Jury, rather than to have the Grand Jury receive forthright testimony from the witnesses that appeared before it.

This is particularly true in the case of Alicea and Cuadrado, as well as the other "inside" witnesses.

It seems clear that the Government's strategy was to overwhelm the trial with a vast quantity of testimony. However, it is evident that the quality of such evidence left much to be desired.

In respect to the defendant Munoz, it would seem that it was Alicea's testimony alone upon which the indictment was predicated as he was not indicted prior to Alicea's testimony before the Grand Jury. It should be pointed out that the jury did not believe Alicea but nevertheless found Munoz guilty.

It is, therefore, clear that it was the sheer quantity of testimony that caused the jury to compromise and to return a guilty verdict against both defendants as to Count I of the indictment.

VII

DELIBERATE MISQUOTING OF WITNESSES BY
PROSECUTOR IN HIS CHARTS USED IN THE
GOVERNMENT'S SUMMATION

In connection with the Government's summation in this case, the prosecutors prepared charts wherein they capsulized and paraphrased the testimony of various government witnesses out of its context and displayed these charts throughout their summation to the jury. In many instances the testimony so selected for use in their charts was grossly misleading. This was particularly true in the presentation of the testimony of the witness Cannizzaro. For example, on the Government chart, Number Four, they quoted the testimony of Cannizzaro to be that Sims' requests to hire a liason was "TO AVOID FUTURE PROBLEMS", suggesting that there would be no more demonstrations. Whereas, in fact, at page 2356 of the transcript, it was clear that Sims was telling the witness that the problem was the lack of sufficient minority employees on the project site and further that minority employees were not being treated fairly by other workers. Notwithstanding what the actual testimony was, the prosecutors twisted the testimony to imply that the employment of a liason man would protect the project from demonstrations. This, of course, was a willfull distortion of the evidence by the prosecution. Was not this done to obtain a conviction rather than to secure justice?

VIII

MISCELLANEOUS ACTS OF THE PROSECUTION

a) The sheer length of the indictment charging several types of crimes some of which, for example, the alleged obstruction of justice was of such prejudicial nature and the Government knowing full well that they could not have substantiated the allegations made therein was a further indication of the Government's prosecutorial abuse.

b) The sheer amount of money offered to all the witnesses as well as defendants in order to get Munoz and Sims was further indication of the Governments bad faith.

c) At the outset of the trial a request was made for an all agency search covering the defendant Munoz, no such material was provided the defense.

d) A major issue was made of the Muffeleto tapes. Counsel was requested to spend his lunch hours listening to tapes and literally wasted time when in fact the Government at no time intended to play them and never did.

LAW AND ARGUMENT

In Giglio vs. U.S. 405 U.S. 150 at 153, the Supreme Court said:

"As long ago as Mooney vs. Holohan, 294 U.S. 103, 112 (1935), this Court made clear that deliberate deception of a Court and jurors by presentation of known false evidence is incompatible with rudimentary demands of justice****"

"(W)e said, the same result obtains when the State although not soliciting false evidence allows it to go uncorrected".

On November 5, 1975, the United States Court of Appeals for the Second Circuit in Washington vs. Vincent (No. 248 Docket 75-2100) Crim. Law Rep. Vol. 18, 2221, held:

"The knowing use by a state prosecutor of perjured testimony ordinarily results in a deprivation of fundamental due process, violating the 14th Amendment and requiring a new trial."

The United States District Court for South Dakota (Nichols, C.J.) in U.S. vs. Banks, Crim. Law Rep., Vol. 16, 2090 (10-30-74) dismissed the indictment in an exercise of its supervisory powers where the Court found that the Government crossed the lines from negligence to bad faith.

The exercise of supervisory power does not depend on a finding of due process violations. Instead the supervisory power can be utilized whenever the administration of justice is tainted. McNabb vs. U.S. 332.

In U.S. vs. Melillo, 275 F. Supp. 314 at 319, Judge Jack Weinstein of the Eastern District of New York addressed himself the suggestion that trial judges should be reluctant to grant motions of acquittals. Judge Weinstein responded, "Such an attitude encourages

the trial judge to abdicate his responsibility. It must be rejected".
(underscoring ours)

It is urged that this case cries out for the exercise of judicial discretion in granting defendants motion. The prosecution certainly crossed the line of negligence to gross misconduct and in fact as shown herein, they participated in activities that are violations of Federal criminal statutes.

The cases cited herein certainly sustain the position that sanctions are in order when Government misconduct becomes so gross that the ends of justice may no longer be serviced. The appropriate sanction in this case is a directed verdict of acquittal as to both defendants.

CONCLUSION

It follows that in view of the many serious acts of prosecutorial misconduct that the Court should, in its discretion, grant the defendants' motion for judgment of acquittal or in the alternative, at the very least, order a new trial.

Respectfully submitted,

MURRAY RICHMAN,
Counsel for Robert Munoz

BENJAMIN LEWIS,
Counsel for James Sims

74 Cr. 1168 (C.B.M.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

-v- :

ROBERT MUNOZ and
JAMES SIMS, :

Defendants. :

-----x

74 Cr. 1168 (C.B.M.)

GOVERNMENT'S MEMORANDUM OF LAW

Preliminary Statement

Convicted defendants Robert Munoz and James Sims have made motions pursuant to Rule 29, Federal Rules of Criminal Procedure for Judgments of Acquittal after being found guilty of conspiracy to violate the Federal explosives law and the Hobbs Act. Their motions allege prosecutorial misconduct in a variety of areas. This memorandum is submitted in support of the Government's opposition to that motion.

POINT I

THE GOVERNMENT ACTED PROPERLY IN CALLING
CARLOS CUADRADO TO TESTIFY AT TRIAL

The defendant's allege that the Government called Cuadrado to testify knowing that he would perjure himself. This allegation stands unsupported by defendants either in fact or in law.

The Government has no knowledge that any answer Cuadrado gave on direct examination was false. Cuadrado had originally testified falsely before the Grand Jury several times. However he thereafter admitted his perjury and subsequently testified under oath in that same Grand Jury. Absent any information to the contrary, the Government was entitled to rely on such sworn testimony and call upon Cuadrado to testify at trial. See United States v. Jordano, 521 F.2d 695 (2d Cir. 1975).

The defendant's fail to cite any particular answer by Cuadrado given in response to questions by the Government that was false and that the Government knew was false. To

the contrary the Government asked no questions of Cuadrado on direct examination the answer to which incriminated Munoz. The questions asked relating to James Sims were in large part corroborated by another Government witness, Samuel Ammergual. Cuadrado's evidence which incriminated Eddie Jackson was corroborated to some extent by Fruto Alicea. Likewise the evidence offered against Cleo Williams was corroborated in part by Warnell Vega.

In short the defendant's charge of subornation of perjury is so devoid of specifics because in fact there are none that support this irresponsible claim.

POINT II

REDIRECT EXAMINATION OF CUADRADO AS TO
HIS MEETINGS WITH MUNOZ'S ATTORNEY WAS
ENTIRELY PROPER.

No sooner had Government counsel concluded direct examination of Cuadrado than Munoz's attorney Murray Richman, Esq. elicited testimony from Cuadrado that Munoz knew nothing of the conspiracy or any illegal acts. Government counsel had not questioned Cuadrado regarding Munoz.* Yet Mr. Richman immediately launched into this subject. Mr. Richman failed to bring out that he had met with the witness the night before he testified and after having been prepared to testify by the Government. On re-direct examination the Government questioned Cuadrado concerning that meeting and what had been discussed. Cuadrado stated that he had not told the Government attorneys about it because he thought it was illegal (Tr. 4419).** Cuadrado also stated that Richman had told him

* The Government had reason to believe that Cuadrado's exculpatory testimony regarding Munoz was untrue since it was not in accord with the weight of the other evidence. The Government made the substance of this testimony available to defense counsel before trial.

** Designation "Tr." refers to the trial transcript.

that he would ask him about that meeting during cross-examination. Yet this able attorney, who asked all other witnesses he had interviewed about his prior contacts with them and questioned many Government witnesses about their meetings with Government attorneys, did not ask Cuadrado about that 10 P.M. meeting in a Bronx restaurant the night before (Tr. 4429). Clearly the Government was entitled to question Cuadrado on re-direct examination concerning his bias for and friendship with Richman's client Munoz - Mc Cormick Evid. 2d Ed § 40 (1972). The Court so ruled at the time (Tr. 4464-67).

POINT III

THE GOVERNMENT IS ENTITLED TO LEAD WITNESSES
IN THE GRAND JURY

Defendants claim that the use of leading questions in the Grand Jury was improper and forms the basis for a Judgment of Acquittal. They offer no legal support for this novel proposition which is devoid of any legal merit

The Court has held on numerous occasions that the Grand Jury is entitled to consider hearsay and other incompetent evidence United States v. Calandra, 414 U.S. 338 (1974); United States v. James 493 F. 2d 323 (2d Cir.), cert. denied 419 U.S. 849 (1974); United States v. Harrington, 490 F.2d 487 (2d Cir. 1973). The use of leading questions is clearly within the limits of propriety which attend the examination of witnesses in the Grand Jury. Further, Rule 1101, Federal Rules of Evidence excludes proceedings before a Grand Jury from the application of the rules, which in specific pary, namely rule 611(b), limits the use of leading questions. Hence

art

243a

-7-

there is no basis in case law or statute to claim that the leading of witnesses in a Grand Jury is an act of prosecutorial misconduct.

POINT IV

DEFENDANTS' OTHER CONTENTIONS ARE
WITHOUT MERIT

Defendants' claim that the post indictment use of the Grand Jury was improper has already been ruled on by the Court. The court ruled against the defendants (Tr. 4834).

The allegations by the defendants that the payments to its inside witnesses were improper attempts to "get them" are of no legal moment. The jury was fully apprised of the benefits received by each Government witness including payments of money and the reasons therefore, and found Munoz and James Sims guilty. The defendants cannot now go behind that verdict either because they feel it to be a compromise verdict or because they quarrel with the jury's findings as to the credibility of witnesses.

United States v. Lane, 495 F.2d 683, 690 (2d Cir), cert. denied, 419 U.S. 395 (1974) (compromise verdict); United States v. Koss,

506 F.2d 1103, 1111 (2d Cir. 1974), cert. denied sub nom
Layne v. United States 420 U.S. 977 (1975) (credibility).

The prosecutor's summation fairly commented on the massive evidence here. The defendant's had the opportunity to dispute any points in the charts they did not agree with. The jury was told on many occasions that it was their recollection that counted and not counsel's. The defendants' complaints of wilful distortion are simply not true.

Defendants' claim that the Government wasted their time by making them listen to tapes that the Government didn't use at trial is the argument of attorneys rather than an argument with legal relevance to their clients. Prior to trial the Government provided all counsel with copies of the transcript of this tape (known as the Muffeleto tape). During trial the Government decided it was not necessary to introduce this tape and counsel is miffed that they had to do extra work. This is a fact of life that attorneys constantly have to contend with. To urge this as a basis of a rule 29

motion is indicative of the general substance of this motion.

Defendants' request for an all agency check to determine if they have been overheard on electronic surveillance is still in progress and to date no agency responding has overheard the defendants. This check will be complete by the date of sentencing.

CONCLUSION

The defendants' motion pursuant to Rule 29 is
without merit and should be denied in all respects.

Respectfully submitted,

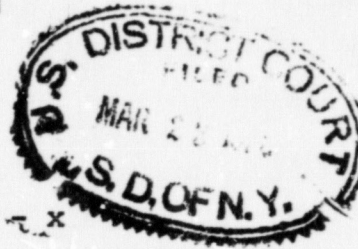
THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

JEFFREY HARRIS
BANCROFT LITTLEFIELD, Jr.
RONALD L. GARNETT
Assistant United States Attorneys
Of Counsel.

TRIAL COURT'S DECISION ON RULE 29 MOTION
DATED MARCH 23, 1976

248a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
UNITED STATES OF AMERICA

-against-

ROBERT MUNOZ, et al.,

Defendants.
----- x

:
:
:
:
:

44109
74 CR. 1168

APPEARANCES

ROBERT B. FISKE, Jr.
United States Attorney
By: Jeffrey Harris
Bancroft Littlefield, Jr.
Ronald L. Garnett
Asst. U. S. Attys.
United States Courthouse Annex
One Saint Andrews Plaza
New York, New York 10007

MURRAY RICHMAN
1930 Grand Concourse
Bronx, New York

Attorney for Defendant Robert Munoz

BENJAMIN LEWIS
475 Fifth Avenue
New York, New York

Attorney for Defendant James Sims

249a

JEFFREY M. HAGEN
310 Madison Avenue
New York, New York 10017

Attorney for Defendant John Sims

RICHARD G. ROSENBAUM
225 Broadway
New York, New York 10007

Attorney for Defendant Frank Sims

ROLAND THAU
Federal Defender Services Unit
The Legal Aid Society
15 Park Row
New York, New York 10038

Attorney for Defendant Cleo Williams

DAVID GREENFIELD
115 Broadway
New York, New York 10006

Attorney for Defendant Edward Jackson

CONSTANCE BAKER MOTLEY, D. J.

MEMORANDUM OPINION

Defendants Robert Munoz and James Sims were indicted along with seven co-defendants for 1) conspiracy to damage property by use of explosives (18 U.S.C. § 844 (i)) and to commit extortion (18 U.S.C. § 1951), 2) multiple actual violations of the explosives and extortion statutes, and 3) obstruction of justice (18 U.S.C. § 1503). Three co-defendants pleaded guilty to conspiracy or perjury before the grand jury and testified for the Government. The remaining four defendants who went to trial with Munoz and James Sims were acquitted of all charges in which they were named. Munoz and Sims, who had each been charged with a total of 30 counts, were both convicted by a jury of the conspiracy charge and acquitted on all other charges.

Before the jury returned its verdict, these defendants, along with the other four defendants on trial, moved for dismissal of the indictment on various allegations of prosecutorial misconduct and bad faith. After verdict, Munoz and James Sims moved for a directed verdict of acquittal or new trial. These motions were denied during and after the trial, for the reasons more fully set forth herein.

I.

On November 4, 1974, a special grand jury sitting in the Southern District of New York, investigating certain bombings and arsons of construction sites and allegedly extortionate acts directed against contractors, returned an indictment in the instant case, 74 Cr. 1010. This indictment was superseded by the present indictment, 74 Cr. 1168, returned on December 11, 1974, adding four additional defendants and seven additional counts. The life of this grand jury expired on December 28, 1974.

On December 27, 1974 and January 3, 1975, after the special grand jury had returned the superseding indictment, Migdalia Ortiz, a significant Government witness in this case, appeared before a different, regular grand jury to testify as to her knowledge of persons allegedly involved in such criminal activity.

On the basis of Ms. Ortiz' appearances before the grand jury, defendants moved variously 1) for an instruction to the petit jury in this case concerning the impropriety of prosecutorial conduct toward this witness; 2) for an order striking Ms. Ortiz' trial testimony in its entirety; 3) for a mistrial due to admission of Ms. Ortiz' testimony.

before the petit jury; or 4) for dismissal of the indictment.

On the basis of written submissions by the parties, extensive argument by counsel out of the presence of the jury, the trial record, and a special evidentiary hearing at which the court heard testimony from Mr. Kenneth R. Feinberg, a former Assistant United States Attorney who supervised presentation of this case to the grand jury, the court makes the following findings with respect to the circumstances surrounding Ms. Ortiz' appearances in December, 1974 and January, 1975.

The special grand jury investigating the events which underlie the instant indictment was convened on June 26, 1973 and was dismissed at the end of its lawful term on December 26, 1974. During its lifetime, the grand jury heard extensive testimony concerning the activities at issue. On or about November 27, 1974, after return of the first indictment, the Government began to receive information from Fruto Alicea, an associate of many of the defendants, which ultimately led to the return of the instant, superseding indictment on December 11, 1974 naming him and others as additional defendants.

It was Mr. Alicea who first indicated to the Government that Ms. Ortiz, who had lived for some time with the defendant James Sims, might be able to supply some new information concerning the events under investigation. Apparently, she was first suggested as a potential witness on November 27. (Trial transcript [tr.] 1989). Moreover, it appears that Mr. Feinberg first heard of Ms. Ortiz on December 3 or December 4 (Tr. 2634); that he did not interview her in any substantial fashion prior to her first appearance before the grand jury (Tr. 2642); and that his information concerning her was limited to the fact that she had lived with James Sims, had allegedly borne his child, and "might have some information about persons involved in the investigation and the bombings" (Tr. 2635). Apparently Mr. Alicea had informed Mr. Feinberg that Ms. Ortiz had accompanied some of the defendants on one or more bombings and that she was aware of the presence of bombs or other explosives in her apartment where James Sims had lived (Tr. 2702).

Ms. Ortiz appeared briefly before the regular grand jury — not the special grand jury which had returned the indictments — on December 27. After her appearance, she was warned by Mr. Feinberg that she could be indicted for perjury (Tr. 1454). In response, she indicated that she had so testified because of threats purportedly made by certain of the

defendants against Mr. Alicea and anyone else who cooperated with the Government investigation (Tr. 1455). Mr. Feinberg attempted to assuage her fears, presented her with a subpoena to reappear before the grand jury on January 3, 1975, asked her "to think it over," and gave her his telephone number (Tr. 1738-1741).

Subsequent to this appearance, Ms. Ortiz was contacted at her home on January 1, 1975 by Agent Markowski, who further encouraged her to recant her allegedly perjurious testimony and to cooperate with the Government's investigation (Tr. 1741-1743). Whether at his urging or otherwise, Ms. Ortiz apparently decided to alter her previous testimony. Her change of heart was relayed to Mr. Feinberg, who then extensively debriefed her before her second grand jury appearance on January 3 (Tr. 2646). This second appearance was her last.

On the basis of the above circumstances and the transcripts of the grand jury testimony, the defendants have put forward what appear to be two separate but related grounds for the requested relief outlined above.

Since the first argument was extensively developed on the record, it will only be summarized briefly here. Although the contentions vary as expressed by different counsel, the central argument is that the Government did not call Ms.

Ortiz before the grand jury in good faith, but rather to force her to perjure herself in order to then threaten her with prosecution as an inducement to testify for the Government. Such conduct, it is argued, constitutes "fraud, deceit and duress" (Tr. 1267) rendering Ms. Ortiz' testimony so "tainted and prejudicial" that remedial action by the court is required. Defendants urge that Ms. Ortiz should have been warned of her right to have appointed counsel; that she was "bullied" (Tr. 1268) "in a crafty, canny, sharp way" (Tr. 2692) and forced to testify after she had sought to assert her Fifth Amendment rights, because Mr. Feinberg knew that she would perjure herself. Finally, in an ultimate hyperbolic gesture, counsel suggest that the Government's conduct is so outrageous as to be comparable to placing a witness on the rack and extracting testimony thereby. ^{1/} Cross examination of Ms. Ortiz by defense counsel on the instant trial failed to support defendants' claims. Moreover, while defense counsel are harshly critical of the Government's treatment of Ms. Ortiz before the grand jury, they fail to make explicit the legal grounds on which they base their own claim for relief and the basis for their standing to raise these issues. However, their claim must rest on one of three grounds. Since they imply that Ms. Ortiz' testimony before the grand jury was essentially coerced, the

further implication may be that her trial testimony is so inherently unreliable that its admission against these defendants would violate their constitutional right to due process of law. Alternatively, since they cite United States v. Banks, 374 F.Supp. 321 (W.D.S.D. 1974) and United States v. Banks, (W.D.S.D. 1974) 383 F.Supp. 389/(the "Wounded Knee" case), they may be arguing that this court should impose sanctions on the Government for allegedly outrageous conduct tainting the administration of justice, without necessarily finding a due process violation as to these defendants. Finally, they seem to argue that the Ortiz testimony should be excluded as the fruit of illegal Government conduct, by analogy to those cases excluding evidence obtained by unconstitutional means (Tr. 1602).

Without deciding the standing issue, the court concludes that the evidence is insufficient either to establish a due process violation or to show an illegal perversion of the processes of the grand jury.

It is clear, in the first place, that since Ms. Ortiz was not a "target" of the grand jury investigation (Tr. 2642), under "custodial" interrogation, she was not entitled to full Miranda warnings, including the statement that counsel would be provided for her if she were unable to afford private counsel. The rather extensive warnings which Mr. Feinberg gave

to her on December 27 were purely gratuitous (Tr. 2722), and there is nothing either in the transcript or the surrounding circumstances to indicate that the initial warnings were intended to intimidate the witness.

The court has been asked to find prosecutorial overreaching in the fact that Mr. Feinberg continued to question Ms. Ortiz before the grand jury on December 27 after she — allegedly frightened, poor and ignorant of the law — had indicated a desire to assert her Fifth Amendment rights. The transcript of that testimony, however, supports Mr. Feinberg's testimony before this court that he continued to question her, and to remind her that the privilege against self-incrimination was personal to her, because he was uncertain that she understood the scope of that right (Tr. 2688-2696). Moreover, Mr. Feinberg testified that he had had no knowledge, prior to her December 27 appearance, that she would perjure herself, and he categorically denied that he intended to cause her to commit perjury in order to force her to testify for the Government (Tr. 2678). The record as a whole does not reveal any conduct by the Government so shocking or suspicious as to warrant relief on the ground advanced.

The second line of argument advanced by defendants is that they are entitled to relief because the Government

acted improperly in calling Ms. Ortiz before the grand jury after an indictment had already been rendered. In these circumstances, it is argued, the Government was not really seeking to obtain information relevant to any on-going investigation, but was merely seeking to preserve Ms. Ortiz' testimony for trial of the pending indictment by misusing the investigatory power of the grand jury — a practice clearly proscribed in this Circuit. United States v. Dardi, 330 F.2d 316, 336 (2d Cir. 1964); United States v. Fisher, 455 F.2d 1101, 1104 (2d Cir. 1972).

The substantive law is undisputed. "It is improper to utilize a Grand Jury for the sole or dominating purpose of preparing an already pending indictment for trial." 330 F.2d at 336. "[T]he grand jury is not meant to be the private tool of a prosecutor." 455 F.2d at 1105. However, it is by no means clear that these defendants would have standing to raise any transgressions of these principles with respect to Ms. Ortiz' grand jury testimony. See Alderman v. United States, 394 U. S. 165 (1969). Yet assuming, arguendo, that they may raise such issues here, the court finds that preparation of the instant case for trial was neither the sole nor the dominating purpose of the Government in calling Ms. Ortiz before the grand jury.

The facts are not entirely free from doubt in this regard, to be sure, and reasonable persons could differ in their interpretation of the circumstances surrounding Ms. Ortiz' appearance. But the Government has clearly made a sufficient showing of good faith to rebut the adverse inferences which defendants have sought to draw from this situation.

It is true, as defendants have pointed out, that it takes a very generous reading of the grand jury testimony to find any references to persons or events other than those covered by the indictment which had previously been rendered; that Ms. Ortiz was not brought before a grand jury to testify as soon as the Government became aware of her relationship to James Sims, but rather sixteen days after the indictment had been returned; that Mr. Feinberg testified that he was at least peripherally concerned with the effect of Ms. Ortiz' grand jury testimony as "3500 material" at trial (Tr. 2713, 2715), and that he admitted that her appearance before the grand jury necessarily preserved her testimony for trial (Tr. 2733). However, when these facts are read in conjunction with other evidence adduced at the trial, it is less clear that the prosecution was trying to "freeze" Ms. Ortiz' testimony before the grand jury.

Mr. Feinberg was exhaustively questioned as to the reasons for a delay in over one month from the time the Government

became aware of Ms. Ortiz as a potential witness until she was finally brought before the grand jury (See, e.g., Tr. 2650-2664). Without going into this testimony in detail, the court merely notes that Mr. Feinberg's answers were credible, and that there is nothing in this delay which necessarily suggests an improper motive in the Government's calling Ms. Ortiz to testify.

Mr. Feinberg testified that the Government had two goals in calling Ms. Ortiz before the grand jury: "One, that she would be able to provide us with evidence concerning other individuals who had been under investigation who had not yet been indicted as part of an ongoing investigation and that, two, Miss Ortiz might also give testimony similar to that which Mr. Alicea had given, that she, too, had been the victim of an obstruction of justice by Mr. Munoz, Mr. James Sims and others" (Tr. 2641). Mr. Feinberg also testified that the scope of interrogation at the December 27 grand jury appearance was restricted to events already covered by the prior indictment because Ms. Ortiz was an "unknown quantity" and he wanted to ascertain whether she would be a truthful witness by asking her questions for which he thought he knew the correct answers (Tr. 2644). No further inquiry was attempted because Mr. Feinberg believed that she was perjuring herself and that Ms. Ortiz might reveal the substance of any further questions to persons who might as yet be unindicted targets of the investigation (Tr. 2645).

This testimony by Mr. Feinberg is certainly credible,
and reveals no impropriety.^{2/}

Moreover, the court finds no impropriety in Ms. Ortiz' January 3, 1975 appearance before the grand jury. It is the Government's position, supported by the testimony of Mr. Feinberg, that Ms. Ortiz was ordered to reappear on January 3 to give her an opportunity to recant the allegedly perjurious testimony which she had delivered on December 27 (Tr. 2647). Arguing from United States v. Del Toro, 513 F.2d 656 (2d Cir. 1975) and United States v. Lardieri, 506 F.2d 319, 322 (3d Cir. 1974), the Government contends that it was not only proper, but perhaps obligatory, for the Government to allow Ms. Ortiz to recant on the record before the grand jury. As an exposition of the law of this Circuit, Del Toro is not dispositive of this case because the Court of Appeals there clearly found a continuing investigation by the grand jury and the subsequent appearances by the alleged perjurer were apparently not solely for the purpose of recantation. 513 F.2d at 666. However, this court finds nothing in Del Toro which would prohibit a recantation appearance by Ms. Ortiz, and affirmatively finds that the policy of the recantation statute, 18 U.S.C. § 1623(d), would be served by such an appearance.

Defendants vigorously assert that the fact that Mr. Feinberg's questions at the second appearance went beyond the scope of his questions of Ms. Ortiz at her first appearance reveals that his purpose was actually to "freeze" her testimony rather than merely to allow her to recant (Tr. 1995). Moreover, in answering this charge, Mr. Feinberg made a comment which could be construed as indicating his desire to preserve her testimony in detail as "3500 material", although he immediately explained that his real intent was to convince the grand jury that she was, by then, a credible, cooperating witness (Tr. 2713-2715).

After having read the transcript of both grand jury appearances, this court is unwilling to rule, as a matter of law, that a recantation must be confined to a verbatim recitation of questions previously answered perjuriously; or to find, as a matter of fact in these circumstances, that the Government was using the second appearance to preserve testimony rather than merely to allow the witness to recant. While the record is not entirely free from ambiguity, the court finds sufficient evidence in the record to support the Government's protestations that neither appearance of Ms. Ortiz before the grand jury was for the "sole or dominating purpose of preparing an already pending indictment for trial." Dardi, supra, at 336.

Accordingly, defendants' motion for relief on these grounds is denied.

II.

Defendants have also moved for identical relief on the basis of alleged prosecutorial violation of the Dardi^{3/} rule in calling Warnell Vega before the grand jury on December 30, 1974 — again after the indictment had been returned. Assuming arguendo, that defendants have standing to raise the claim, the motion is denied.

Vega was first called before the grand jury on July 30, 1974, at which time he apparently perjured himself in several respects. Subsequently, he was charged with perjury in an indictment (74 Cr. 1009 filed on October 29, 1974. After pleading guilty to that indictment in the spring of 1975, he was sentenced on January 23, 1976.

Subsequent to his indictment for perjury, he was named as a defendant in the instant indictment returned on December 11, 1974, and was then called before a different grand jury on December 30, 1974.^{4/} According to the Government, the purpose of the second appearance was not to seek further

evidence for trial of the outstanding indictment, but rather 1) to allow Vega to recant his perjurious testimony at the July 30, 1974 grand jury appearance, and 2) to seek evidence concerning criminal activity by persons not named in the December 11 indictment.

The recantation argument is somewhat more difficult to maintain with respect to Vega than it was in Ms. Ortiz' case. The Government contends (Tr. 3696) that Vega perjured himself in three respects at the July grand jury appearance: 1) with regard to his relationship to the Community Guard Service; 2) with regard to his use of the name Fred Hazelton; and 3) with regard to his knowledge of pipe bombs, "light bulbs", and the like.

Pages 5-7 and 9-15 of the transcript of the December 30 grand jury appearance support this recantation claim, since they concern somewhat the same material as that found at pages 16-18 of the transcript of the July 30 appearance. A fundamental difficulty with this argument is that Vega had already been indicted for perjury before he went before the grand jury in December, and, thus, any "recantation" could not serve to remove the threat of prosecution for perjury. However, Vega's recantation might well have induced the U. S. Attorney to file a nolle prosequi with respect to

the indictment, or he might have been disposed to recommend leniency at the time of sentence. The court cannot rule as a matter of law that the purpose of the recantation statute could not have been served by Vega's appearance before the grand jury under these circumstances. Nor does the court find, as a matter of fact, that recantation was not a major purpose of Vega's December 30, 1974 appearance before the grand jury.

The Government further contends that questions addressed to Vega concerning the activities of Luis Surita, Naim Mafuz, and Natalie Davis — none of whom had been named as defendants in the December 11 indictment — indicate that neither the sole nor the dominating purpose of Vega's appearance was the collection of evidence for the trial of this indictment. ^{5/} While it is certainly clear that investigation of Surita, Mafuz, and Davis was not the primary purpose of this appearance, it is at least arguable, from the transcript, that the Government was interested in obtaining information about them for possible prosecution.

In view of the plausibility of the Government's contentions that Vega's December 30 appearance before the grand jury was for the purposes of allowing a recantation

and also for pursuing a collateral investigation, the court finds that neither the sole nor the dominating purpose of that appearance was preparation of the instant indictment for trial.

III.

Defendants also moved for dismissal of the indictment, a judgment of acquittal, or, in the alternative, a new trial on the ground that the Government attorneys called Carlos Cuadrado as a Government witness, with full knowledge that his testimony would be perjurious. Defendants argue that the prosecutors' conduct in calling Cuadrado, without advising the court that he would testify falsely, amounts to subornation of perjury^{6/} and a denial of defendants' right to due process of law. United States ex rel. Washington v. Vincent, (Slip Op. No. 142) (2d Cir., decided November 5, 1975).

It is certainly true that Washington v. Vincent and other federal cases have established the proposition that a prosecutor's conscious solicitation of false testimony, or his silent, knowledgeable acquiescence in its delivery, ordinarily result in a deprivation of fundamental due process,

requiring a new trial. However, to benefit from this well established principle, defendants must show, not only that Cuadrado perjured himself, but that the prosecutors either knew that he would commit perjury before they called him to testify at trial, or that they knowingly allowed his allegedly false trial testimony to stand uncorrected. Defendants have failed to carry this burden.

Although the court, during the course of its instructions, informed the jury that Mr. Cuadrado's testimony did not appear to be worthy of belief, the ultimate determination of his credibility was within the province of the jury. The court's personal observations were clearly not binding on the jury, nor did they, on any theory, constitute an adjudication of the truth or falsity of Mr. Cuadrado's testimony. Moreover, while the jury implicitly rejected some of his testimony in acquitting certain of the defendants in this case, their verdict alone does not establish that Cuadrado was perjuring himself.

More importantly, however, defendants have not established that the prosecutors knew either that Cuadrado would commit perjury at trial or that he was presently perjuring himself at trial. While the prosecutors were aware that Cuadrado

had initially testified falsely before the grand jury they were also aware that he had admitted his perjury and had then testified further before the same grand jury. The Government was entitled to rely on this testimony, which had been corroborated in part by other witnesses, in deciding to call Cuadrado as a witness at trial. See United States v. Jordano, 521 F.2d 695, 697 (2d Cir. 1975).

Cuadrado's testimony at trial was largely consistent with that delivered during his later appearance before the grand jury. And, while the court found his trial testimony unworthy of belief, it was not so totally implausible as to be incredible as a matter of law. Thus, the court cannot accept defendants' apparent argument that the prosecutors could not, in good faith, offer Cuadrado as a witness at trial. Moreover, the fact that the Government sought to discredit Cuadrado in its summation to the jury is not necessarily demonstrative of the prosecutors' bad faith in calling him as a witness. Such an effort in argument is a permissible trial tactic — open to both prosecution and defense — when a lawyer is saddled with a witness whose credibility has been questioned by the trial judge, and whose ineffective testimony might reflect adversely on the testimony of other witnesses which he had called.

In sum, the court finds that defendants have failed to show that the Government knowingly offered false testimony at this trial. Defendants' charges are serious indeed, but they have not been adequately supported.

Defendants have also sought the relief previously outlined on the ground that the testimony of major "inside" witnesses before the grand jury consisted primarily of perfunctory responses to leading questions addressed by the prosecutors. Thus, it is alleged, the grand jury was unable to obtain complete and spontaneous testimony from the witnesses who were merely used to present the Government's version of the facts.

While it is certainly true that Rule 611 of the Federal Rules of Evidence restricts the use of leading questions on direct examination, this restriction (along with most of the other Rules) is expressly made inapplicable to grand jury proceedings by Rule 1101(d)(2). Moreover, as the Government points out, both the Supreme Court and the Court of Appeals have ruled that a grand jury may consider hearsay and other incompetent evidence in its deliberations, and an indictment rendered thereon, if valid on its face, is not subject to challenge on that basis. United States v. Calandra, 414

U. S. 338 (1974); United States v. James, 493 F.2d 323 (2d Cir. 1974).

In this state of the law, the court finds that the Government's use of leading questions before the grand jury in this case is not, by itself, a legally sufficient ground for dismissal of the indictment or other relief. Nor does the court find that it is part of a larger pattern of prosecutorial misconduct such as would warrant dismissal under this court's supervisory powers over the criminal justice system, as discussed supra.

V.

Defendants Sims and Munoz have cited a number of other instances of alleged prosecutorial misconduct as grounds for a judgment of acquittal or for a new trial. The court finds these contentions to be devoid of merit.

Defendant Munoz argues that he was unfairly prejudiced by Assistant United States Attorney Harris' inquiry to the witness Cuadrado concerning Cuadrado's prior meeting with Mr. Munoz and his attorney (Tr. 4414 et seq.). Munoz argues now, as he did at trial, that this line of questioning created an unwarranted inference of impropriety in the jurors' minds.

At the conclusion of the discussion at trial, the court ruled that the Government had the right to inquire as to any possible bias of the witness toward Mr. Munoz. The court further ruled that any possible prejudice resulting from the prosecutor's inquiry was minimized by the court's instruction to the jury that defendant's attorney could interview any willing witness (Tr. 4467). Defendants have cited no authority which would require that those rulings be disturbed.

Defendants Munoz & Sims further allege that the Government's "sole interest and concern" was harassment and intimidation of defendant Munoz; that "Mr. Munoz, in the eyes of the Government, was a defendant in search of a case and that the thrust of the investigation was to get Munoz rather than uncover the truth. . . ." (Memorandum in Support of Munoz & James Sims' Motion for Judgment of Acquittal or New Trial, p. 4). This abuse of prosecutorial discretion, they allege, had a "spill-over effect" in the indictment and conviction of James Sims.

In support of these allegations, defendants first rely upon certain informal remarks purportedly made by one of the prosecutors to a lawyer for another defendant to the effect that the Government was more concerned about securing a conviction of Mr. Munoz than of the other defendants. (Tr. 6556

et seq.). Assuming the accuracy of this account (although there was no sworn testimony on the subject), the court is of the opinion that these remarks — made informally in discussions among defense counsel and Government's counsel in the context of assessing the relative strength of the Government's case against various defendants — are insufficient to show prosecutorial misconduct of such magnitude as to justify a judgment of acquittal. (Tr. 6578 - 6579).

Defendants attempt to bolster their contentions of prosecutorial abuse by alleging that payments made to various critical Government witnesses under authority of the Witness Protection Program (Pub. L. No. 91-452, Title V) were, in reality, payments to corruptly procure testimony favorable to the Government's case ^{7/} rather than to afford protection from possible danger. While there was conflicting evidence at trial regarding the possible danger to which any witnesses might have been subjected, it seems clear to the court that the Government could reasonably have believed that support payments and protection were necessary to ensure the witnesses' safety. Particularly since the nature and amount of any payments were apparently fully disclosed at the trial — for the consideration of both court and jury — the court does not find the payments at issue in this case to be evidence of Governmental

bad faith or abuse of prosecutorial discretion.

. Defendants also allege that the Government wilfully misrepresented certain evidence in the course of its summation to the jury, particularly in its choice of material for inclusion on charts to aid the jurors' recollection. Whatever distortion may have resulted from preparation of these charts was certainly cured by the court's repeated admonitions that the jurors' recollection of the evidence would govern deliberations.

While defendants have perfunctorily raised a number of other instances of alleged prosecutorial misconduct, the court finds them to be without merit.

Defendants' various motions are accordingly denied.

Dated: New York, New York

March 23, 1976

Constance Baker Motley
CONSTANCE BAKER MOTLEY
U. S. D. J.

FOOTNOTES

1. Counsel for defendants Munoz and Jackson make the following observation in their memorandum in support of sanctions:
"Take for a moment the analogy of substituting the word Rack for Grand Jury, if the government were to place the witness on a Rack to cause her to become a government witness, would there by [sic] any doubt that the government would most assuredly be strongly sanctioned for their conduct. To supbeona [sic] a puerto [sic] Rican woman who is on welfare to the Grand Jury is not dissimilar."
2. Mr. Feinberg's admission that he intended to investigate whether Ms. Ortiz had been the victim of an obstruction of justice by Munoz, Sims and others does not necessarily mean that he would thus be garnering evidence for trial of the prior indictment. Count 30 of the indictment — the count alleging an obstruction of justice — referred to efforts to influence "a prospective government witness" who, presumably, was Fruto Alicea. Any efforts to influence Ms. Ortiz would have to be the subject of a new indictment by the grand jury.
3. United States v. Dardi, supra.
4. The grand jury minutes from this appearance are styled United States of America v. Robert Munoz, et al., rather than United States v. John Doe. However, the court attaches no weight to this fact, which may be due merely to clerical inadvertence.

A 202 Affidavit of Personal Service of Papers
COURT OF APPEALS
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES OF AMERICA,

appellee

- against -

Robert Murray & James Sims
appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega, *being duly sworn,*
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York
That on the 26th day of May 1976 at One St. Andrews Plaza, New York, New York
deponent served the annexed Appendix ~~Brief~~ upon
Robert B. Fiske Jr.,

the Attorney in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 26th
day of May 1976

Robert T. Brin

Victor Ortega

VICTOR ORTEGA

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977